

Captive Insurance Act; Regulation of Captive Insurance Companies; SB 410

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

[*Note:* A captive is an insurance company created and wholly owned by one or more non-insurance companies to insure the risks of its owner (or owners).]

Creation of the Act [New Section 1]

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

Captive Insurance Companies

Definitions Under the Act [Section 36]

The bill amends the definition of “captive insurance company” to mean any pure captive insurance company or association captive insurance company; for purposes of the Act, a branch captive insurance company is a pure captive insurance company with respect to operations in Kansas, unless otherwise permitted by the Commissioner of Insurance (Commissioner) of the Kansas Insurance Department (Department).

The bill also amends various definitions, specifies definitions for additional terms, removes certain definitions, and integrates the amended statute into the Act.

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

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

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

The bill removes certain references; specifies insurance and exposure to risk; specifies captive insurance companies are prohibited from providing personal lines of insurance, long-term care coverage, critical care coverage, surety, title insurance, and credit insurance; prohibits a captive insurance company from providing accident and health insurance, life insurance, or annuities on a direct basis; states no captive insurance company authorized as a life insurance company is able to transact business other than life insurance; and prohibits a captive insurance company authorized to transact business related to fire insurance or casualty, surety, and fidelity from engaging in the business of life insurance.

The bill amends the requirements for meetings and specifies the materials the applicant captive insurance company is required to file with the Commissioner before receiving a certificate of authority.

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

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

Name of Company [Section 38]

The bill amends law related to the name of a captive insurance company by removing reference to an aircraft captive insurance company.

Capital Requirements [Section 39]

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

Incorporation or Formation and Membership [Section 40]

The bill amends the formation possibilities of a pure captive insurance company to include incorporation as a nonstock corporation or formation as a limited liability company,

partnership, or limited partnership; states an association captive insurance company can be incorporated as a stock corporation or nonstock corporation, or formed as a limited liability company, partnership, or limited partnership; specifies incorporator and organizer requirements for a captive insurance company; states member, manager, or partner requirements for a captive insurance company formed as a corporation, limited liability company, partnership, or limited partnership; describes the quorum for a captive insurance company formed as a corporation; and specifies the applicability of laws.

Reports of Financial Condition [Section 41]

The bill amends law related to the annual report of financial condition of captive insurance companies to describe the requirements for the report and filing deadlines, requires the filing of a report of financial condition on a quarterly basis to be designated by the Commissioner, specifies confidential treatment for all reports, and requires the Commissioner to adopt rules and regulations related to forms.

Financial Examination [Section 42]

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

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

Additionally, the bill specifies confidential treatment of documents, access of information, and provides a sunset of July 1, 2023, for confidentiality of certain documents unless the Legislature reviews and reenacts the provision.

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

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

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

Investments [Section 44]

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

Assumption of Risks [Section 45]

The bill amends law related to the assumption of risk by captive insurance companies to specify the captive insurance company is permitted to assume all or any part of an individual risk or all or any part of a particular class of risks by affiliated insurers, authorizes the company to take a credit or reduction from liability for reinsurance of risks or portions of risks ceded to a reinsurer, and removes reference to aircraft captive insurance companies.

Guaranty or Insolvency Fund [Section 46]

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

Premium Tax [Section 47]

The bill amends the law related to companies subject to premium taxes. The bill specifies the tax rate for direct premiums and assumed reinsurance premiums, and the maximum tax for each year, and requires the tax to be calculated annually unless prorated for multi-year policies or contracts.

Exemption from Provisions or Rules and Regulations [Section 48]

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

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

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

Rules and Regulations [New Section 2]

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

Prior Approval Required for Certain Acts [New Section 3]

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

Inspection of Records and Civil Penalties [New Section 4]

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

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

Captive Insurance Regulatory and Supervision Fund [New Section 5]

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

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

Dormant Captive Insurance Company [New Section 6]

The bill specifies a “dormant captive insurance company” (dormant captive) is a captive insurance company that has ceased transacting the business of insurance, including the issuance of insurance policies, and there are no remaining liabilities associated with insurance business transactions or insurance policies issued prior to the filing of its application for a certificate of dormancy. A certificate will be revoked if the dormant captive no longer meets this criteria.

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

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

Material Change to Financial Condition [New Section 7]

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

Branch Captive Insurance Companies [New Sections 8-14]

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

Establishment of Branch Captives [New Section 8]

The bill authorizes the establishment of branch captives, specifies applicability of the Insurance Code, and states the Act takes precedence over the Insurance Code. The bill describes the requirements of maintaining a principal place of business and appointing a Kansas resident as principal representative in order to conduct insurance business in Kansas.

Definitions [New Section 9]

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

Securities [New Section 10]

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

- Minimum capital and surplus of an amount equal to the amount set forth in KSA 40-4304 as the minimum capital requirement for a pure captive insurance company; and
- Reserves on such insurance policies or reinsurance contracts as may be issued or assumed by the branch captive through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations, unless the Commissioner permits a branch captive to credit against reserve equipment under KSA 40-221a.

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

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

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

Required Filing of Reports and Statements [New Section 12]

The bill specifies the requirements of a branch captive to file reports and statements with the Commissioner, authorizes the Commissioner to waive the requirement of an annual report, and provides for confidentiality treatment for reports.

Examination of a Branch Captive [New Section 13]

The bill states the examination of a branch captive will be of the branch business and branch operations only, as long as the branch captive insurance company provides an annual certificate of compliance to the Commissioner or its equivalent and demonstrates it is operating in sound financial condition. Further, a branch captive is required to grant authority to the Commissioner for examination of affairs of a branch captive in a specified jurisdiction, as a condition of the issuance of a certificate of authority, and all reports will be given confidential treatment.

Premium Tax [New Section 14]

The bill specifies a premium tax applies only to the branch business of a branch captive insurance company.

Special Purpose Insurance Captive [New Sections 15-35]

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

Definitions [New Section 15]

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

Applicability of Laws [New Section 16]

The bill states no provision of Kansas insurance laws, other than New Sections 15-35, are applicable to a special captive. However, the bill specifies Chapter 40, Article 33, of the Kansas statutes (relating to insurance holding companies) continues to apply, as applicable.

Further, the bill states New Sections 15-35 take precedence over the Insurance Code. The bill authorizes the Commissioner to exempt a special captive from rules and regulations and orders, under certain circumstances.

Transacting Business [New Section 17]

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

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

The bill specifies the requirements a special captive must meet to obtain a certificate of authority to transact business in Kansas. These requirements include filing an application, including certain documents, descriptions, statements, and affidavits; depositing specified securities with the Commissioner; demonstrating the minimum surplus required is established and held in Kansas; providing copies of any filings made by the ceding company with the ceding company's domiciliary insurance regulator and any letters of approval or disapproval received from the insurance regulator (but this requirement does not apply to a ceding company that is not required to make filings with its domiciliary insurance regulator, provided the applicant provides certification of such); revising plan of operation and meeting requirements imposed by a revised plan of operation, as may be required by the Commissioner; and paying a nonrefundable application fee of \$10,000.

Further, the bill specifies the time line for the Department to act on the completed application and states a certificate of authority under this section continues until March 1 of each year and is renewable at the discretion of the Commissioner.

Requirements of a Plan of Operation [New Section 18]

The bill requires a special captive to file a plan of operation as part of its application. The plan of operation includes a description of the contemplated financing transaction and a detailed description of transaction documents to which the special captive is a party, including the special captive contract, and specifies other required documents, including *pro forma* balance sheets.

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

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

The bill describes the required findings of the Commissioner before approving an application and issuing a certificate of authority to a special captive. The Commissioner will be

required to find the proposed plan of operation provides a reasonable and expected successful operation, the terms of the transactions proposed in the plan of operation to which the special captive is a party comply with the Act, and the Commissioner of the domiciliary state of each ceding company has notified the Commissioner in writing or the applicant has provided satisfactory assurance to the Commissioner that the regulator has approved or granted a disapproval of the special captive contract. The bill also specifies considerations by the Commissioner in evaluating the expectation of a successful operation of a special captive.

Incorporation or Formation [New Section 20]

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

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

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

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

The bill specifies the requirements for a special captive to enter into a special captive contract with a ceding company. The special captive must have been granted a certificate of authority to transact business as a special captive, and the special captive must provide the Commissioner with approval or disapproval from the ceding company's regulatory official, but provides an alternative if the ceding company's regulatory official does not customarily provide evidence of such approval or disapproval.

Securities and Surplus Notes [New Section 23]

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

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

Investment Management Agreement [New Section 24]

The bill requires the special captive's assets to be managed in accordance with an investment management agreement filed with and approved by the Commissioner. The special captive is required to invest at least 90 percent of its assets in cash and securities that are investment grade at the time of acquisition. The balance may be invested in cash, securities, or other assets otherwise permitted in the Insurance Code.

Recognition of Admitted Assets; Orders by the Commissioner [New Section 25]

The bill specifies the admitted assets of the special captive must include permitted investments, proceeds from securitization (the term's definition is established in New Section 15), premium and other amounts payable by a ceding insurer to the special captive, and any other assets approved by the Commissioner. Additionally, with prior approval of the Commissioner, letters of credit and guarantees of a parent may be recognized as an admitted asset. The bill includes a method for the Commissioner to reduce the amount of admitted assets previously approved if the Commissioner has determined the value of those assets has decreased. Such method requires an order, time for remedy, notifications, a resolution period, and the special captive's right to an administrative hearing.

Prohibitions [New Section 26]

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

Dividends and Distributions [New Section 27]

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

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

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

Affiliated Agreements [New Section 29]

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

Reporting of Financial Conditions [New Section 30]

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

Financial Examinations and Reports [New Section 31]

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

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

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

Upon review, the Commissioner enters an order either adopting or rejecting the examination report, or calls for and conducts a fact-finding hearing for purposes of obtaining additional information. The bill specifies the requirements for all orders describes the terms of

privacy and confidentiality for such reports, and specifies the bill does not limit the Commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to Kansas insurance laws.

Reinsurance Premium Tax [New Section 32]

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

Additionally, the bill specifies no reinsurance premium tax is payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities in certain circumstances; specifies the premium tax constitutes all taxes collectible under Kansas law from any special captive, except *ad valorem* taxes on real and personal property used in the production of income could be collected; specifies the requirements of the special captive submitting a return by February 1 of each year stating the amount of all direct premiums and assumed reinsurance premiums received; specifies the requirements of the Commissioner to notify the company of taxes due; and specifies a special captive failing to make returns as required or failing to pay within the time required subjects the special captive to the interests and penalties prescribed in KSA 40-2806.

Confidentiality of Documents [New Section 33]

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

The bill outlines the authority of the Commissioner to share and receive documents and materials with federal and international regulatory agencies and the NAIC and its affiliates, and includes a sunset provision of July 1, 2023, for exclusion from the Kansas Open Records Act for documents received. The bill outlines the requirements for sharing agreements, including specifying procedures and protocols for confidentiality and security, specifying ownership of information shared with NAIC remains with the Commissioner; requires prompt notice to the insurer and affiliates; requires the NAIC to consent to intervention by an insurer under certain circumstances; and specifies a sunset provision of July 1, 2023, for confidentiality provisions.

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

Conservation, Rehabilitation, or Liquidation [New Section 34]

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

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

Rules and Regulations [New Section 35]

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