

2023 Kansas Statutes

40-4302. Certificate of authority to provide insurance coverage; certain risks not authorized to be covered; requirements for doing business; documents and information required to be filed with commissioner; examination and registration fees; issuance of certificate of authority; privacy protections in court proceedings.

(a) Any captive insurance company, when permitted by its organizational documents, may apply to the commissioner for a certificate of authority to do any and all insurance comprised in K.S.A. 40-901 et seq., 40-1102(1)(a), (1)(c) through (1)(n), and amendments thereto, and to issue life, accident and health insurance policies provided that:

- (1) No pure captive insurance company shall insure any risks other than those of its parent and affiliated companies and, upon prior approval of the commissioner, any controlled unaffiliated business up to 5% of total direct written premium;
- (2) no association captive insurance company shall insure any risks other than those of its association and those of the member organizations of its association. No association captive insurance company shall expose itself to loss on any one risk or hazard in an amount exceeding 10% of its paid-up capital and surplus;
- (3) no captive insurance company shall provide personal lines of insurance, workers' compensation, employers' liability insurance coverage, long-term care coverage, critical care coverage, surety, title insurance, credit insurance or any component thereof, except that a technology-enabled fiduciary financial institution insurance company shall be permitted to provide contracts of suretyship and credit insurance in accordance with K.S.A. 2023 Supp. 40-4354, and amendments thereto;
- (4) no captive insurance company shall accept or cede reinsurance except as provided in K.S.A. 40-4311, and amendments thereto;
- (5) no captive insurance company shall provide accident and health, life insurance or annuities on a direct basis;
- (6) no captive insurance company authorized as a life insurance company shall transact business other than life insurance; and
- (7) no captive insurance company authorized to transact business under article 9 or 11 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, shall engage in the business of life insurance.

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

- (1) It first obtains from the commissioner a certificate of authority authorizing it to do insurance business in this state;
- (2) its board of directors, members, partners, managers, committee of managers or other governing body holds at least one meeting each year in this state;
- (3) it maintains its principal place of business in this state; and
- (4) it authorizes the commissioner to accept service of process on its behalf in accordance with K.S.A. 40-218, and amendments thereto.

(c) Before receiving a certificate of authority, an applicant captive insurance company shall file with the commissioner:

- (1) A copy of the applicant captive insurance company's organizational documents; and
- (2) a plan of operation or a feasibility study describing the anticipated activities and results of the applicant captive insurance company that shall include:
 - (A) The company's loss prevention program of its parent and insureds, as applicable;
 - (B) historical and expected loss experience of the risks to be insured or reinsured by the applicant captive insurance company;
 - (C) pro forma financial statements and projections of the proposed business operations of the applicant captive insurance company;
 - (D) an analysis of the adequacy of the applicant captive insurance company's proposed premiums, assets and capital and surplus levels relative to the risks to be insured or reinsured by the captive insurance company;
 - (E) a statement of the applicant captive insurance company's net retained limited liability on any contract of insurance or reinsurance it intends to issue and the nature of any reinsurance it intends to cede;
 - (F) a statement certifying that the applicant captive insurance company's investment

policy is in compliance with this act and specifying the type of investments to be made;

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

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

(I) whenever required by the commissioner, an appropriate opinion by a qualified independent actuary regarding the adequacy of the applicant captive insurance company's proposed capital, surplus and premium levels;

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

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

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

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

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

(f) If the commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this act, the commissioner may grant a certificate of authority authorizing a:

(1) Captive insurance company other than a technology-enabled fiduciary financial institution to do insurance business in this state until March 1 thereafter, which certificate of authority may be renewed; and

(2) technology-enabled fiduciary financial institution insurance company to do insurance business in this state until the later of March 1 thereafter or the maturity date of the last payment-in-kind asset held by such technology-enabled fiduciary financial institution insurance company pursuant to this act.

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

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

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

(B) the information sought is unavailable from other non-confidential sources;

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

(D) the privacy of a qualified policyholder shall be protected in any court proceeding concerning such qualified policyholder if the technology-enabled fiduciary financial institution insurance company so petitions the court. Upon the filing of such petition, any information, including, but not limited to, an instrument, inventory, statement or verified report produced by the technology-enabled fiduciary financial institution insurance company regarding a policy issued to a qualified policyholder or payment-in-kind assets held by the technology-enabled fiduciary financial institution insurance company to satisfy claims of such qualified policyholder, all payment-in-kind policies, all petitions relevant to such information and all court orders thereon, shall be sealed upon filing and shall not be made a part of the public record of the proceeding, except that such petition shall be available to the court, the commissioner, the technology-enabled fiduciary financial institution insurance company, their attorneys and to such

other interested persons as the court may order upon a showing of good cause;

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

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

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

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

(4) the privacy of those who have established an affiliated fidfin trust or alternative asset custody account shall be protected in any court proceeding concerning such trust or custody account if the acting trustee, custodian, trustor or any beneficiary so petition the court. Upon the filing of such a petition, the instrument, inventory, statement filed by any trustee or custodian, annual verified report of the trustee or custodian and all petitions relevant to trust administration and all court orders thereon shall be sealed upon filing and shall not be made a part of the public record of the proceeding, except that such petition shall be available to the court, the trustor, the trustee, the custodian, any beneficiary, their attorneys and to such other interested persons as the court may order upon a showing of good cause.

History: L. 1988, ch. 156, § 2; L. 2018, ch. 50, § 37; L. 2022, ch. 29, § 3; April 14.