

SENATE BILL No. 377

By Committee on Financial Institutions and Insurance

1-24

1 AN ACT concerning insurance; relating to the captive insurance act;
2 authorizing technology-enabled fiduciary financial institution insurance
3 companies; providing for the certificate of authority, requirements and
4 operations thereof; amending K.S.A. 40-4301, 40-4302, 40-4303, 40-
5 4310 and 40-4353 and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) In addition to the types of insurance permitted
9 under K.S.A. 40-4302, and amendments thereto, the certificate of authority
10 issued to a technology-enabled fiduciary financial institution insurance
11 company shall authorize such insurance company to provide contracts of
12 suretyship or credit insurance where the obligee under the contract of
13 suretyship or the insured under the contract of credit insurance, as the case
14 may be, is:

- 15 (1) An affiliated technology-enabled fiduciary financial institution;
16 (2) an affiliated fidfin trust; or
17 (3) any other affiliated company.

18 (b) (1) In addition to the types of insurance otherwise permitted, and
19 without any limitation, under K.S.A. 40-4302, and amendments thereto,
20 the certificate of authority issued to a technology-enabled fiduciary
21 financial institution insurance company shall authorize such insurance
22 company to insure its affiliated companies that are investors in an
23 investment fund against liability, loss or damage resulting from owning an
24 interest in an investment fund from any of the following risks:

25 (A) Fraud, theft or conversion of assets by a manager of an
26 investment fund;

27 (B) the obligation of an investor in an investment fund to indemnify
28 or exculpate a manager of such investment fund;

29 (C) any obligation of an affiliated technology-enabled fiduciary
30 financial institution, affiliated fidfin trust or affiliated company to
31 indemnify or exculpate an affiliated company or an investment fund in
32 which any affiliated fidfin trust is an investor, or of which an affiliated
33 fidfin trust is an affiliated company or of which any affiliated fidfin trust is
34 a manager;

35 (D) the inability of an investor to recover damages from a manager of
36 such investment fund as a result of exculpation provisions in the governing

1 documents of such investment fund;

2 (E) breach of representations or warranties made by a transferor,
3 assignor or investor in an investment fund in connection with a transfer or
4 assignment of an interest in an investment fund; or

5 (F) breach of an obligation of a transferor, assignor or investor in an
6 investment fund to pass through to the transferee, assignee or substitute
7 investor in an investment fund any and all economic benefits of a
8 transferred or assigned interest in an investment fund.

9 (2) To the extent that such coverages in this subsection are not
10 included within any of the classes enumerated in K.S.A. 40-1102, and
11 amendments thereto, such coverages shall be deemed as included in
12 K.S.A. 40-1102(1)(n), and amendments thereto, and the commissioner
13 shall assign such coverages to an appropriate line of business for financial
14 reporting purposes and all other purposes under chapter 40 of the Kansas
15 Statutes Annotated, and amendments thereto.

16 (c) For the purpose of any policy or product offered by a technology-
17 enabled fiduciary financial *institution insurance* company as insurance,
18 fortuitous events shall include, without limitation:

19 (1) The denial of, or failure to provide, consent by a manager of an
20 investment fund to the assignment or transfer of interests in an investment
21 fund from an investor to an affiliated fidfin trust;

22 (2) any action taken by a manager of an investment fund that affects
23 the economic value of an investor's interest in an investment fund in
24 response to the attempted transfer of such interest in an investment fund to
25 an affiliated fidfin trust;

26 (3) after an attempted transfer of an interest in an investment fund
27 from an investor to an affiliated fidfin trust, the failure of such investor to
28 transmit any distributions or other economic value from such interest in an
29 investment fund to the applicable affiliated fidfin trust;

30 (4) after an attempted transfer of an interest in an investment fund
31 from an investor to an affiliated fidfin trust, any action taken by another
32 investor in such investment fund that affects:

33 (A) The economic value of such interest in an investment fund; or

34 (B) such transferor's ability to transfer such interest in an investment
35 fund to the applicable affiliated fidfin trust; and

36 (5) any other risks related to the transfer of an interest in an
37 investment fund from an investor to an affiliated fidfin trust.

38 (d) Notwithstanding the provisions of K.S.A. 40-4303, and
39 amendments thereto, a technology-enabled fiduciary financial institution
40 insurance company shall not be required to incorporate the word "captive"
41 into its name if such insurance company incorporates into its name any of
42 the following identifiers:

43 (1) "Technology-enabled fiduciary financial institution insurance

1 company" or "TEFFI insurance company";

2 (2) "Kansas e-commerce fidfin insurance company"; or

3 (3) "KEFFI."

4 (e) For purposes of K.S.A. 40-4302(b)(3), and amendments thereto,
5 the principal place of business in this state of a technology-enabled
6 fiduciary financial institution insurance company may be located in the
7 same or shared office premises with an affiliated technology-enabled
8 fiduciary financial institution or other technology-enabled fiduciary
9 financial institution insurance company.

10 (f) Any natural person who serves as a member of the board of
11 directors of an affiliated technology-enabled fiduciary financial institution
12 or other affiliated company may concurrently fulfill the Kansas residency
13 requirement of K.S.A. 9-2306(b), and amendments thereto, and may:

14 (1) Serve on the board of directors of a technology-enabled fiduciary
15 financial institution insurance company that is organized as a corporation
16 or serve as a manager of a technology-enabled fiduciary financial
17 institution that is organized as a limited liability company; and

18 (2) fulfill the applicable Kansas residency requirements of K.S.A. 40-
19 4306(d), and amendments thereto.

20 (g) (1) A technology-enabled fiduciary financial institution insurance
21 company may enter into service contracts with any other technology-
22 enabled fiduciary financial institution insurance company, an affiliated
23 technology-enabled fiduciary financial institution or affiliated companies
24 that provide for services to be performed:

25 (A) For the technology-enabled fiduciary financial institution
26 insurance company, including such insurance companies that operate with
27 or without direct employees; or

28 (B) by the technology-enabled fiduciary financial institution
29 insurance company.

30 (2) Any personnel who perform services for a technology-enabled
31 fiduciary financial institution insurance company, either as employees of
32 such insurance company or pursuant to service contracts, may
33 concurrently perform services for any other technology-enabled fiduciary
34 financial institution insurance company, an affiliated technology-enabled
35 fiduciary financial institution or an affiliated company thereof, either as
36 employees or pursuant to service contracts.

37 (h) (1) If a technology-enabled fiduciary financial institution
38 insurance company issues payment-in-kind policies that expressly require
39 such insurance company to hold a sufficient amount of in-kind assets to
40 meet the full obligations of such payment-in-kind policies, such insurance
41 company shall hold in-kind assets in a total amount determined to be
42 actuarially prudent to meet its obligations to make claim payments under
43 such payment-in-kind policies, but in no event shall such amount be less

1 than the sum of the aggregate obligations of and for all such payment-in-
2 kind policies. If a technology-enabled fiduciary financial institution
3 insurance company issues payment-in-kind policies that do not expressly
4 require such insurance company to hold a certain amount of in-kind assets,
5 such insurance company shall hold in-kind assets to the extent determined
6 to be actuarially prudent by such insurance company and confirmed by a
7 third-party actuary selected by such insurance company, to enable such
8 insurance company to meet its obligations to make claim payments under
9 such payment-in-kind policies. Such third-party actuary shall have an
10 actuarial designation meeting the national association of insurance
11 commissioners minimum property and casualty actuarial educational
12 standards for a property and casualty appointed actuary as published on the
13 website for the national association of insurance commissioners. For the
14 purposes of the captive insurance act, a technology-enabled fiduciary
15 financial institution insurance company shall value any in-kind asset or
16 combination of in-kind assets in accordance with generally accepted
17 accounting principles, as applied by such insurance company in its sole
18 discretion.

19 (2) A technology-enabled fiduciary financial institution insurance
20 company shall satisfy claims under a payment-in-kind policy by delivering
21 to the qualified policyholder in-kind assets or a combination of in-kind
22 assets pursuant to the schedules attached to such payment-in-kind policy.
23 The in-kind assets or combination of in-kind assets delivered to a qualified
24 policyholder may be:

25 (A) An interest or interests in an investment fund that is the subject of
26 such payment-in-kind policy; or

27 (B) any other in-kind assets or combination of in-kind assets as shall
28 be selected by such insurance company in its sole discretion if such assets
29 have a like or equal value and otherwise comply with the schedules
30 attached to such payment-in-kind policy.

31 (3) Any in-kind assets held pursuant to this subsection shall be
32 required to be counted as part of the reserves, capital and surplus of a
33 technology-enabled fiduciary financial institution insurance company
34 maintained and reported as for the primary and predominant business
35 activity of the writing of insurance or the reinsuring of risks, except that a
36 technology-enabled fiduciary financial institution insurance company that
37 satisfies the requirements of K.S.A. 40-4304, and amendments thereto,
38 shall not be required to hold any other assets so long as such in-kind assets
39 are sufficient to meet its obligations to make claim payments under
40 payment-in-kind policies by delivering such in-kind assets to qualified
41 policyholders.

42 (4) All revenue and income generated by the in-kind assets required
43 to be held pursuant to this subsection, including interest, capital gains and

1 investment revenue and income, whether realized or unrealized, shall be
2 deemed income derived from the business activity of the writing of
3 insurance or the reinsuring of risks underwritten by technology-enabled
4 fiduciary financial institution insurance companies. If such amounts
5 represent net income, then such income shall be reported as statutory
6 revenues from the business activity of the writing of insurance or the
7 reinsuring of risks. If such amounts represent a net loss, then such loss
8 shall be reported as statutory net losses included with losses from claims.
9 Such amounts shall be reported and included in a statutory ~~profit and loss~~
10 financial ~~statement~~ **statements**. All payment-in-kind assets required to be
11 held by a technology-enabled fiduciary financial institution insurance
12 company under this subsection shall be reported on its statutory balance
13 sheet as being dedicated to the satisfaction of such company's payment-in-
14 kind obligations resulting from the business activity of the writing of
15 insurance or the reinsuring of risks.

16 (5) A technology-enabled fiduciary financial institution insurance
17 company will be required to report any items required to be included under
18 this subsection in a statutory financial statement in the segment reporting
19 section of the footnotes prepared in accordance with generally accepted
20 accounting principles.

21 (6) A technology-enabled fiduciary financial institution insurance
22 company will be required to include in its complete statutory financial
23 statements in the footnotes reporting other information prepared in
24 accordance with generally accepted accounting principles.

25 (i) Any insurance company regardless of the jurisdiction in which
26 such insurance company is organized and operates is permitted to hold
27 equity interests in an affiliated technology-enabled fiduciary financial
28 institution and may utilize such equity interests as in-kind assets when
29 issuing payment-in-kind policies to such affiliated technology-enabled
30 fiduciary financial institution or other qualified policyholder.

31 (j) A technology-enabled fiduciary financial institution insurance
32 company shall not be required to employ, engage or contract more than
33 one employee in this state to provide services for such technology-enabled
34 fiduciary financial institution insurance company or to facilitate any
35 examinations required by the captive insurance act.

36 (k) A technology-enabled fiduciary financial institution insurance
37 company or other insurance company organized under the provisions of
38 K.S.A. 40-4306, and amendments thereto, that has been issued a certificate
39 of authority under K.S.A. 40-4302, and amendments thereto, shall be an
40 "insurance company" as defined in K.S.A. 40-222c, and amendments
41 thereto. An insurance company described in this subsection shall be
42 considered to have as its primary and predominant business activity the
43 writing of insurance or the reinsuring of risks underwritten by insurance

1 companies and shall be subject to the supervision of the commissioner.

2 (l) *A technology-enabled fiduciary financial institution insurance*
3 *company that has been issued a certificate of authority under K.S.A. 40-*
4 *4302, and amendments thereto, shall be permitted, subject to compliance*
5 *with the provisions of K.S.A. 40-214, and amendments thereto, to do*
6 *business in any other state or territory of the United States.*

7 (m) A technology-enabled fiduciary financial institution policy may
8 include a provision that such policy shall be governed by, and construed in
9 accordance with, the laws of the state of Kansas and such policy provision
10 shall control over any contrary provision of state law regarding conflict of
11 laws.

12 ~~(m)~~(n) A technology-enabled fiduciary financial institution policy
13 may include a provision that any suit, action or proceeding arising out of
14 or relating to such technology-enabled fiduciary financial institution policy
15 shall be brought in any district court of this state or the United States
16 district court for the district of Kansas and any such provision shall be
17 fully enforceable.

18 (o) *A technology-enabled fiduciary financial institution policy*
19 *issued in connection with an affiliated fidfin trust or fidfin transaction*
20 *as defined in K.S.A. 2021 Supp. 9-2301, and amendments thereto, shall*
21 *respect the form, treatment and character of such affiliated fidfin trust*
22 *or fidfin transaction under the laws of this state notwithstanding the*
23 *treatment or characterization of such transaction under generally*
24 *accepted accounting principles or for tax purposes.*

25 ~~(n)~~(p) A payment-in-kind policy issued to a qualified policyholder
26 shall be fully enforceable in accordance with such policy's terms and
27 conditions as defined in K.S.A. 40-4301, and amendments thereto.

28 ~~(o)~~(q) The provisions of this section shall be construed in a manner
29 that shall not be disruptive to state efforts to establish a coherent policy
30 with respect to a technology-enabled fiduciary financial institution
31 insurance company, a technology-enabled fiduciary financial institution
32 policy, payment-in-kind policies, technology-enabled fiduciary financial
33 institutions or any other matter of substantial public concern related
34 thereto.

35 ~~(p)~~(r) This section shall be a part of and supplemental to the captive
36 insurance act.

37 Sec. 2. K.S.A. 40-4301 is hereby amended to read as follows: 40-
38 4301. As used in the captive insurance act, unless the context requires
39 otherwise:

40 (a) "Affiliated company" means any person, other than a natural
41 person in that person's individual capacity, in the same corporate system as
42 a parent, or an associate member by common ownership, control,
43 operation or management, *any affiliated fidfin trust and any affiliated*

1 *technology-enabled fiduciary financial institution.*

2 (b) *"Affiliated fidfin trust" means a trust, including a fidfin trust of*
3 *which an affiliated technology-enabled fiduciary financial institution acts*
4 *as a trustee or custodian.*

5 (c) *"Affiliated technology-enabled fiduciary financial institution"*
6 *means a technology-enabled fiduciary financial institution:*

7 (1) *That is related to a technology-enabled fiduciary financial*
8 *institution insurance company by common ownership; or*

9 (2) *at least 5% of the equity interests of which, including any equity*
10 *interests in the technology-enabled fiduciary financial institution's holding*
11 *company are owned directly, indirectly or beneficially by a technology-*
12 *enabled fiduciary financial institution insurance company. In calculating a*
13 *technology-enabled fiduciary financial institution insurance company's*
14 *ownership of a technology-enabled fiduciary financial institution:* (A)
15 *Both voting and nonvoting equity interests shall be included in such*
16 *calculation; and (B) any equity interests of the technology-enabled*
17 *fiduciary financial institution owned by an affiliate of such technology-*
18 *enabled fiduciary financial institution insurance company shall be*
19 *attributed to such technology-enabled fiduciary financial institution*
20 *insurance company.*

21 ~~(b)~~(d) *"Association" means any legal association of persons,*
22 *corporations, limited liability companies, partnerships, associations or*
23 *other entities that have been in continuous existence for at least one year or*
24 *such lesser period of time approved by the commissioner, whether or not*
25 *in conjunction with some or all of the member organizations that:*

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

29 (2) *have complete voting control over an association captive*
30 *insurance company incorporated as a mutual insurer;*

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

33 (4) *have complete voting control over an association captive*
34 *insurance company formed as a limited liability company.*

35 ~~(c)~~(e) *"Association captive insurance company" means any captive*
36 *insurance company that insures risks of association members.*

37 ~~(d)~~(f) *"Association member" means any person that belongs to an*
38 *association.*

39 ~~(e)~~(g) *"Capital and surplus" means the amount by which the value of*
40 *all of the assets exceeds all of the liabilities of the captive insurance*
41 *company, as determined under the method of accounting utilized by the*
42 *captive insurance company in accordance with the applicable provisions of*
43 *this act.*

1 ~~(f)~~(h) "Captive insurance company" means any pure captive
2 insurance company or association captive insurance company. For
3 purposes of this act, a branch captive insurance company shall be a pure
4 captive insurance company with respect to operations in this state, unless
5 otherwise permitted by the commissioner.

6 ~~(g)~~(i) "Commissioner" means the commissioner of insurance.

7 (j) *"Common ownership" means at least 5% equity ownership,*
8 *whether voting or nonvoting, that is held directly, indirectly or beneficially*
9 *through one or more entities, including ownership in a technology-enabled*
10 *fiduciary financial institution's holding company.*

11 ~~(h)~~(k) "Controlled unaffiliated business" means any person other than
12 a natural person in that natural person's individual capacity:

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

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

17 (3) whose risks are managed by a pure captive insurance company.

18 ~~(i)~~(l) "Department" means the Kansas insurance department.

19 ~~(j)~~(m) "Domestic" means any insurance company formed under the
20 laws of the state of Kansas.

21 (n) *"Fidfin trust" means the same as defined in K.S.A. 2021 Supp. 9-*
22 *2301, and amendments thereto.*

23 (o) *"In-kind asset" means:*

24 (1) *Any loan, financing or extension of credit, including to an*
25 *affiliated fidfin trust, originated by a technology-enabled fiduciary*
26 *financial institution;*

27 (2) *one or more equity interests in one or more investment funds,*
28 *each an interest in an investment fund, or one or more equity interests in*
29 *one or more technology-enabled fiduciary financial institutions;*

30 (3) *any loan, financing or extension of credit secured by the pledge of*
31 *equity of one or more interests in an investment fund or the cash flow*
32 *derived therefrom;*

33 (4) *any other assets that serve as collateral securing such loans,*
34 *equity or debt financing or extensions of credit described in this*
35 *subsection; and*

36 (5) *any beneficial interests in trusts that own assets described in this*
37 *subsection that are held by an insurance company for the purpose of*
38 *enabling such insurance company to meet its obligations to make claim*
39 *payments under payment-in-kind policies by delivering such assets.*

40 ~~(k)~~(p) "Insurer" means the same as "insurance company" as that term
41 is defined in K.S.A. 40-222c, and amendments thereto.

42 (q) *"Interest in an investment fund," "equity interest in an investment*
43 *fund" and terms of similar import mean the ownership or contractual*

1 *rights to the economics, directly or indirectly, of an investment fund,*
2 *including pursuant to economic direction agreements, contractual rights,*
3 *interests and entitlements to any economics derived from an investment*
4 *fund.*

5 (r) *"Investment fund" means any collective investment vehicle,*
6 *whether organized as a limited partnership, limited liability company or*
7 *in some other form, and whether organized in the United States or a*
8 *foreign jurisdiction, when the interests in such vehicle qualify as*
9 *alternative assets as defined in K.S.A. 2021 Supp. 9-2301, and*
10 *amendments thereto.*

11 (s) *"Investor in an investment fund" and terms of similar import*
12 *means any party who owns an interest in an investment fund.*

13 (t) *"Manager" means with respect to an investment fund, the general*
14 *partner of a limited partnership, the manager of a limited liability*
15 *company, any person with equivalent authority in a similar business entity*
16 *or any investment manager who manages the investments of an investment*
17 *fund pursuant to a contract.*

18 (u) *"Member organization" means any individual, corporation,*
19 *limited liability company, partnership, association or other entity that*
20 *belongs to an association.*

21 (v) *"Natural person" means a human being.*

22 (w) *"Organizational documents" means the captive insurance*
23 *company's articles of organization, bylaws, operating agreement or other*
24 *foundational document that establishes the captive insurance company as a*
25 *legal entity or prescribes its existence.*

26 (x) *"Parent" means a corporation, partnership or individual that*
27 *directly or indirectly owns, controls or holds with power to vote more than*
28 *50% of the outstanding voting securities or other voting interest of a pure*
29 *captive insurance company, or as assigned in the plan of operation.*

30 (y) *"Payment-in-kind policy" means a policy that, along with any*
31 *applicable schedules, is required to be in writing and which satisfies the*
32 *following conditions:*

33 (1) *The policyholder of such policy is a qualified policyholder;*

34 (2) *is issued by a technology-enabled fiduciary financial institution*
35 *insurance company or an insurance company organized in a jurisdiction*
36 *other than Kansas;*

37 (3) *provides that such insurance company has the option, in such*
38 *insurance company's sole discretion, to make claim payments, in whole or*
39 *in part, in cash or in the form of in-kind assets rather than cash pursuant*
40 *to schedules attached to the policy as required by this subsection and*
41 *agreed to in writing by the qualified policyholder;*

42 (4) *provides for such payment-in-kind policy to be fully enforceable*
43 *in accordance with such policy's terms and this subsection;*

1 (5) may provide for such payment-in-kind policy or provisions
2 relating to in-kind assets and payments thereof to be governed by, and
3 construed in accordance with, the laws of the state of Kansas and such
4 policy or provisions shall control over any contrary provision of state law
5 regarding conflict of laws and any such provision shall be fully
6 enforceable;

7 (6) may provide that any suit, action or proceeding arising out of or
8 relating to such payment-in-kind policy shall be brought in any district
9 court of this state or the United States district court for the district of
10 Kansas and any such provision shall be fully enforceable;

11 (7) may be a contract of suretyship or credit insurance in accordance
12 with section 1, and amendments thereto;

13 (8) contains one or more schedules to such payment-in-kind policy
14 that sets out a description of the specific in-kind assets that the insurance
15 company may deliver to the qualified policyholder to make claim
16 payments as agreed to in writing by the qualified policyholder;

17 (9) may include a copy of the governing documents in effect at the
18 time of issuance of such payment-in-kind policy of any legal entity that is
19 the issuer of or obligor under such in-kind assets;

20 (10) includes a provision that the qualified policyholder agrees that
21 the insurance company has no obligation to provide, and the qualified
22 policyholder has no additional rights to, any further disclosure regarding
23 the in-kind assets and shall not rely on any other disclosures provided by
24 the insurance company other than the disclosure required by this
25 subsection;

26 (11) includes a provision that the qualified policyholder agrees that
27 such insurance company has no obligation to make claim payments in any
28 form other than the in-kind assets specified in such schedules;

29 (12) requires the qualified policyholder to acknowledge that such
30 insurance company has no obligation to deliver to such qualified
31 policyholder any underlying assets in the chain of ownership below the in-
32 kind assets specified in such schedules; and

33 (13) requires the qualified policyholder to acknowledge that:

34 (A) Such qualified policyholder has no recourse against the
35 insurance company with respect to any in-kind assets other than those in-
36 kind assets scheduled and attached to such payment-in-kind policy; and

37 (B) any such recourse shall be limited to only those scheduled in-kind
38 assets that the insurance company, in the insurance company's sole
39 discretion, makes available to such qualified policyholder as an in-kind
40 payment in response to a claim initiated by such qualified policyholder.

41 (Ⓣ)(z) "Person" means a natural person, partnership, trust, estate,
42 association, corporation, limited liability company, custodian, nominee or
43 other individual or entity in its own or any representative capacity, in each

1 case whether domestic, foreign or alien.

2 ~~(†)~~(aa) "Personal lines of insurance" means personal motor vehicle,
3 homeowner's insurance coverage, residential fire insurance or any
4 component thereof.

5 ~~(†)~~(bb) "Pure captive insurance company" means any company that
6 insures risks of its parent and affiliated companies and controlled
7 unaffiliated business.

8 (cc) "*Qualified policyholder*" means:

9 (1) *An affiliated fidfin trust;*

10 (2) *the owner or deemed owner of an affiliated fidfin trust if such*
11 *affiliated fidfin trust has a certificate of ownership;*

12 (3) *a qualified purchaser as defined in section 2(a)(51) of the federal*
13 *investment company act of 1940, as in effect on July 1, 2022; or*

14 (4) *an institutional investor as defined in the Kansas uniform*
15 *securities act.*

16 ~~(†)~~(dd) "Risk retention group" means a captive insurance company
17 organized under the laws of the state of Kansas pursuant to the liability
18 risk retention act of 1986, 15 U.S.C. § 3901 et seq., as amended, as a stock
19 or mutual corporation, a reciprocal or other limited liability entity.

20 (ee) "*Technology-enabled fiduciary financial institution*" means the
21 *same as defined in K.S.A. 2021 Supp. 9-2301, and amendments thereto.*

22 (ff) "*Technology-enabled fiduciary financial institution insurance*
23 *company*" means a pure captive insurance company that:

24 (1) *Is related to a technology-enabled fiduciary financial institution*
25 *by common ownership; or*

26 (2) *owns, directly, indirectly or beneficially at least 5% of the equity*
27 *interests of a technology-enabled fiduciary financial institution, including*
28 *any equity interests in such technology-enabled fiduciary financial*
29 *institution's holding company. In calculating a technology-enabled*
30 *fiduciary financial institution insurance company's ownership of a*
31 *technology-enabled fiduciary financial institution:*

32 (A) *Both voting and nonvoting equity interests shall be included in*
33 *such calculation; and*

34 (B) *any equity interests of the technology-enabled fiduciary financial*
35 *institution owned by an affiliate of such technology-enabled fiduciary*
36 *financial institution insurance company shall be attributed to such*
37 *technology-enabled fiduciary financial institution insurance company.*

38 (gg) "*Technology-enabled fiduciary financial institution policy*"
39 *means a contract of insurance or suretyship issued by a technology-*
40 *enabled fiduciary financial institution insurance company.*

41 (hh) "*Technology-enabled fiduciary financial institution*
42 *policyholder*" means the:

43 (1) *Insured, in the case of a technology-enabled fiduciary financial*

1 *institution policy that is a contract of insurance; or*

2 (2) *obligee, in the case of a technology-enabled fiduciary financial*
3 *institution policy that is a contract of suretyship.*

4 Sec. 3. K.S.A. 40-4302 is hereby amended to read as follows: 40-
5 4302. (a) Any captive insurance company, when permitted by its
6 organizational documents, may apply to the commissioner for a certificate
7 of authority to do any and all insurance comprised in K.S.A. 40-901 et
8 seq., 40-1102(1)(a), (1)(c) through (1)(n), and amendments thereto, and to
9 issue life, accident and health insurance policies provided that:

10 (1) No pure captive insurance company shall insure any risks other
11 than those of its parent and affiliated companies and, upon prior approval
12 of the commissioner, any controlled unaffiliated business up to 5% of total
13 direct written premium;

14 (2) no association captive insurance company shall insure any risks
15 other than those of its association and those of the member organizations
16 of its association. No association captive insurance company shall expose
17 itself to loss on any one risk or hazard in an amount exceeding 10% of its
18 paid-up capital and surplus;

19 (3) no captive insurance company shall provide personal lines of
20 insurance, workers' compensation, employers' liability insurance coverage,
21 long-term care coverage, critical care coverage, surety, title insurance,
22 credit insurance or any component thereof, *except that a technology-*
23 *enabled fiduciary financial institution insurance company shall be*
24 *permitted to provide contracts of suretyship and credit insurance in*
25 *accordance with section 1, and amendments thereto;*

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

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

30 (6) no captive insurance company authorized as a life insurance
31 company shall transact business other than life insurance; and

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

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

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

39 (2) its board of directors, members, partners, managers, committee of
40 managers or other governing body holds at least one meeting each year in
41 this state;

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

43 (4) it authorizes the commissioner to accept service of process on its

1 behalf in accordance with K.S.A. 40-218, and amendments thereto.

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

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

6 (2) a plan of operation or a feasibility study describing the anticipated
7 activities and results of the applicant captive insurance company that shall
8 include:

9 (A) The company's loss prevention program of its parent and
10 insureds, as applicable;

11 (B) historical and expected loss experience of the risks to be insured
12 or reinsured by the applicant captive insurance company;

13 (C) pro forma financial statements and projections of the proposed
14 business operations of the applicant captive insurance company;

15 (D) an analysis of the adequacy of the applicant captive insurance
16 company's proposed premiums, assets and capital and surplus levels
17 relative to the risks to be insured or reinsured by the captive insurance
18 company;

19 (E) a statement of the applicant captive insurance company's net
20 retained limited liability on any contract of insurance or reinsurance it
21 intends to issue and the nature of any reinsurance it intends to cede;

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

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

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

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

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

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

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

43 (d) Each captive insurance company not in existence on January 1,

1 2018, shall pay to the commissioner a nonrefundable fee of \$10,000 for
2 examining, investigating and processing its application for a certificate of
3 authority. The commissioner is authorized to retain legal, financial,
4 actuarial, analysis and examination services from outside the department,
5 the reasonable costs of which shall be charged against the applicant. In
6 addition, it shall pay a renewal fee for each year thereafter of \$10,000.

7 (e) Each captive insurance company already in existence on January
8 1, 2018, shall pay an annual renewal fee of \$110 until January 1, 2028,
9 after which date the provisions of subsection (d) shall apply.

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

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

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

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

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

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

32 (B) the information sought is unavailable from other non-confidential
33 sources; ~~and~~

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

36 (D) *the privacy of a qualified policyholder shall be protected in any*
37 *court proceeding concerning such qualified policyholder if the*
38 *technology-enabled fiduciary financial institution insurance company so*
39 *petitions the court. Upon the filing of such petition, any information,*
40 *including, but not limited to, an instrument, inventory, statement or*
41 *verified report produced by the technology-enabled fiduciary financial*
42 *institution insurance company regarding a policy issued to a qualified*
43 *policyholder or payment-in-kind assets held by the technology-enabled*

1 *fiduciary financial institution insurance company to satisfy claims of such*
2 *qualified policyholder, all payment-in-kind policies, all petitions relevant*
3 *to such information and all court orders thereon, shall be sealed upon*
4 *filing and shall not be made a part of the public record of the proceeding,*
5 *except that such petition shall be available to the court, the commissioner,*
6 *the technology-enabled fiduciary financial institution insurance company,*
7 *their attorneys and to such other interested persons as the court may order*
8 *upon a showing of good cause;*

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

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

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

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

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

34 Sec. 4. K.S.A. 40-4303 is hereby amended to read as follows: 40-
35 4303. (a) The word "captive" shall be incorporated into the name of every
36 captive insurance company organized under the laws of this state. No
37 captive insurance company shall adopt a name that is the same,
38 deceptively similar or likely to be confused with or mistaken for any other
39 existing business name registered in the state of Kansas.

40 (b) *The provisions of subsection (a) shall not apply to a technology-*
41 *enabled fiduciary finance insurance company if such insurance company*
42 *complies with the provisions of section 1(d), and amendments thereto.*

43 Sec. 5. K.S.A. 40-4310 is hereby amended to read as follows: 40-

1 4310. (a) Captive insurance companies shall comply with:

2 (1) *Except for any payment-in-kind assets held by a technology-*
3 *enabled fiduciary financial institution insurance company*, the investment
4 requirements contained in articles 2a and 2b of chapter 40 of the Kansas
5 Statutes Annotated, and amendments thereto, as applicable; and

6 (2) such investment requirements as may otherwise be approved by
7 the commissioner upon application by any such captive insurance
8 company.

9 (b) Investments of association captive insurance companies shall be
10 valued in accordance with the valuation procedures established by the
11 national association of insurance commissioners, except to the extent it is
12 inconsistent with the accounting standards in use by the company and
13 approved by the commissioner.

14 (c) *Insurance companies organized in a jurisdiction other than*
15 *Kansas and Kansas technology-enabled fiduciary financial institution*
16 *insurance companies may hold in-kind assets in accordance with section*
17 *1, and amendments thereto, and any such in-kind assets required to be*
18 *held shall be counted as part of the reserves, capital and surplus of such*
19 *insurance companies required for the primary and predominant business*
20 *activity of the writing of insurance or the reinsuring of risks underwritten*
21 *by technology-enabled fiduciary financial institution insurance*
22 *companies.*

23 (d) *A technology-enabled fiduciary financial institution insurance*
24 *company shall be permitted to hold equity interests in an affiliated*
25 *technology-enabled fiduciary financial institution.*

26 Sec. 6. K.S.A. 40-4353 is hereby amended to read as follows: 40-
27 4353. K.S.A. 40-4301 through 40-4304, 40-4306 through 40-4315, 40-
28 4317 ~~and 40-4318 and K.S.A. 40-4319~~ through 40-4353, and amendments
29 thereto, *and section 1, and amendments thereto*, shall be known and may
30 be cited as the captive insurance act.

31 Sec. 7. K.S.A. 40-4301, 40-4302, 40-4303, 40-4310 and 40-4353 are
32 hereby repealed.

33 Sec. 8. This act shall take effect and be in force from and after its
34 publication in the Kansas register.