

HOUSE BILL No. 2547

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

Be it enacted by the Legislature of the State of Kansas:

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

(1) An affiliated technology-enabled fiduciary financial institution;

(2) an affiliated fidfin trust; or

(3) any other affiliated company.

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

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

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

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

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

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

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

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

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

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

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

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

in an investment fund to the applicable affiliated fidfin trust;

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

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

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

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

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

(1) "Technology-enabled fiduciary financial institution insurance company" or "TEFFI insurance company";

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

(3) "KEFFI."

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

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

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

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

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

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

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

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

(h) (1) If a technology-enabled fiduciary financial institution insurance company issues payment-in-kind policies that expressly require such insurance company to hold a sufficient amount of in-kind assets to meet the full obligations of such payment-in-kind policies, such insurance company shall hold in-kind assets in a total amount determined to be actuarially prudent to meet its obligations to make claim payments under such payment-in-kind policies, but in no event shall such amount be less than the sum of the aggregate obligations of and for all such payment-in-kind policies. If a technology-enabled fiduciary financial institution insurance company issues payment-in-kind policies that do not expressly require such insurance company to hold a certain amount of in-kind assets, such insurance company shall

hold in-kind assets to the extent determined to be actuarially prudent by such insurance company and confirmed by a third-party actuary selected by such insurance company, to enable such insurance company to meet its obligations to make claim payments under such payment-in-kind policies. Such third-party actuary shall have an actuarial designation meeting the national association of insurance commissioners minimum property and casualty actuarial educational standards for a property and casualty appointed actuary as published on the website for the national association of insurance commissioners. For the purposes of the captive insurance act, a technology-enabled fiduciary financial institution insurance company shall value any in-kind asset or combination of in-kind assets in accordance with generally accepted accounting principles, as applied by such insurance company in its sole discretion.

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

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

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

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

(4) All revenue and income generated by the in-kind assets required to be held pursuant to this subsection, including interest, capital gains and investment revenue and income, whether realized or unrealized, shall be deemed income derived from the business activity of the writing of insurance or the reinsuring of risks underwritten by technology-enabled fiduciary financial institution insurance companies. If such amounts represent net income, then such income shall be reported as statutory revenues from the business activity of the writing of insurance or the reinsuring of risks. If such amounts represent a net loss, then such loss shall be reported as statutory net losses included with losses from claims. Such amounts shall be reported and included in statutory financial statements. All payment-in-kind assets required to be held by a technology-enabled fiduciary financial institution insurance company under this subsection shall be reported on its statutory balance sheet as being dedicated to the satisfaction of such company's payment-in-kind obligations resulting from the business activity of the writing of insurance or the reinsuring of risks.

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

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

(i) Any insurance company regardless of the jurisdiction in which

such insurance company is organized and operates is permitted to hold equity interests in an affiliated technology-enabled fiduciary financial institution and may utilize such equity interests as in-kind assets when issuing payment-in-kind policies to such affiliated technology-enabled fiduciary financial institution or other qualified policyholder.

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

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

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

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

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

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

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

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

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

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

(a) "Affiliated company" means any person, other than a natural person in that person's individual capacity, in the same corporate system as a parent, or an associate member by common ownership, control, operation or management, *any affiliated fidfin trust and any affiliated technology-enabled fiduciary financial institution.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) *"Fidfin trust" means the same as defined in K.S.A. 2021 Supp.*

9-2301, and amendments thereto.

(o) "In-kind asset" means:

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

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

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

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

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

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

(q) "Interest in an investment fund," "equity interest in an investment fund" and terms of similar import mean the ownership or contractual rights to the economics, directly or indirectly, of an investment fund, including pursuant to economic direction agreements, contractual rights, interests and entitlements to any economics derived from an investment fund.

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

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

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

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

~~(m)~~(v) "Natural person" means a human being.

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

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

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

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

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

(3) provides that such insurance company has the option, in such insurance company's sole discretion, to make claim payments, in whole or in part, in cash or in the form of in-kind assets rather than cash pursuant to schedules attached to the policy as required by this

subsection and agreed to in writing by the qualified policyholder;

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

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

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

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

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

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

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

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

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

(13) requires the qualified policyholder to acknowledge that:

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

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

~~(z)~~ "Person" means a natural person, partnership, trust, estate, association, corporation, limited liability company, custodian, nominee or other individual or entity in its own or any representative capacity, in each case whether domestic, foreign or alien.

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

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

(cc) "Qualified policyholder" means:

(1) An affiliated fidfin trust;

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

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

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

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

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

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

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

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

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

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

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

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

(1) *Insured, in the case of a technology-enabled fiduciary financial institution policy that is a contract of insurance; or*

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

Sec. 3. K.S.A. 40-4302 is hereby amended to read as follows: 40-4302. (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 section 1, 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 ~~it~~ *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; ~~and~~

(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; ~~and~~

(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.

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

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

Sec. 5. K.S.A. 40-4310 is hereby amended to read as follows: 40-4310. (a) Captive insurance companies shall comply with:

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

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

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

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

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

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

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

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.