

2023 Kansas Statutes

40-4354. Technology-enabled fiduciary financial institution insurance company; powers and duties; types of insurance authorized; naming requirements; payment-in-kind policies; policy provisions. (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. 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.

History: L. 2022, ch. 29, § 1; April 14.