

2023 Kansas Statutes

40-4301. Definitions. 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.
- (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) "Association captive insurance company" means any captive insurance company that insures risks of association members.
- (f) "Association member" means any person that belongs to an association.
- (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) "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) "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) "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) "Department" means the Kansas insurance department.
- (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. 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.
- (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. 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.
- (u) "Member organization" means any individual, corporation, limited liability company, partnership, association or other entity that belongs to an association.
- (v) "Natural person" means a human being.
- (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.
- (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 K.S.A. 2023 Supp. 40-4354, 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.

(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. 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.

History: L. 1988, ch. 156, § 1; L. 1990, ch. 177, § 1; L. 2018, ch. 50, § 36; L. 2022, ch. 29, § 2; April 14.