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**REVISOR *of* STATUTES**

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**MEMORANDUM**

To: Chairman Johnson and members of the House Committee on Insurance and Pensions  
From: Office of Revisor of Statutes  
Date: March 9, 2022  
Subject: **SB 377; Authorizing technology-enabled fiduciary financial institution insurance companies within the captive insurance act and providing for the requirements and operations thereof.**

Senate Bill No. 377 allows for the creation of technology-enabled fiduciary financial institution (TEFFI) insurance companies within the captive insurance act, K.S.A. 40-4301 et seq. This is the senate version of HB 2547.

The bill adds a new section to the captive insurance act establishing such TEFFI insurance companies. Section 1 of the bill establishes the requirements for TEFFI insurance company operations under the certificate of authority issued by the commissioner of insurance, including:

1. Authorizing a TEFFI insurance company to provide contracts of suretyship or credit insurance when the obligee or insured is
  - A. An affiliated TEFFI;
  - B. an affiliated fidfin trust; or
  - C. any other affiliated company;
2. providing for the types of risks for which a TEFFI insurance company may insure against;
3. listing events that constitute fortuitous events for the purpose of any policy or product offered by a TEFFI insurance company as insurance;
4. exempting a TEFFI insurance company from the requirement to use the word "captive" in such insurance company's name if the TEFFI insurance company uses in its name any of the following:
  - A. "Technology-enabled fiduciary financial institution insurance company" or "TEFFI insurance company";
  - B. "Kansas e-commerce fidfin insurance company"; or

C. "KEFFI";

5. allowing a TEFFI insurance company to have its principal place of business in the same or shared office premises with an affiliated TEFFI or other TEFFI insurance company;
6. allowing any person who serves on the board of an affiliated TEFFI or other affiliated company to serve on the board of the TEFFI insurance company and fulfill the Kansas residency requirements of both the captive insurance act and the TEFFI act;
7. allowing a TEFFI insurance company to enter into service contracts with other TEFFI insurance companies, affiliated TEFFIs or affiliated companies;
8. providing requirements and procedures for TEFFI insurance companies that issue-payment-in-kind policies;
9. allowing any insurance company regardless of jurisdiction that is permitted to hold equity interests in an affiliated TEFFI to utilize such equity interests as in-kind assets when issuing payment-in-kind policies;
10. not requiring any more than one employee in this state to provide services for a TEFFI insurance company or to facilitate any examinations required under the captive insurance act;
11. considering a TEFFI insurance company to be an insurance company and to have as its primary and predominate 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 of insurance;
12. allowing a policy provision that such policy shall be governed by, and construed in accordance with, Kansas law;
13. allowing a forum selection provision in a TEFFI policy requiring that any suit, action or proceeding be brought in either Kansas state district court or the U.S. district court for the district of Kansas and such provision shall be fully enforceable;
14. providing that payment-in-kind policy issued to a qualified policyholder shall be fully enforceable in accordance with such policy's terms and conditions; and
15. providing for how section 1 shall be construed.

Section 2 amends K.S.A. 40-4301, the definitions section of the captive insurance act, to add definitions for several TEFFI and TEFFI insurance company related terms.

Section 3 amends K.S.A. 40-4302 to permit a TEFFI insurance company to provide contracts of suretyship and credit insurance as an exception to the general prohibition against captive insurance companies providing surety services.

Amendments to this section also change the certificate of authority renewal date for a TEFFI insurance company to the later of March 1 or the maturity date of the last payment-in-kind asset held by the TEFFI insurance company.

This section further amends the statute to protect the privacy of qualified policyholders and those who have established an affiliated fidfin trust or alternative asset account in court proceedings.

Section 4 amends K.S.A. 40-4303 by exempting a TEFFI insurance company from the requirement that the word "captive" be incorporated into the name of every Kansas captive insurance company if the TEFFI insurance company complies with the naming requirements in section 1.

Section 5 amends K.S.A. 40-4310 to allow TEFFI insurance companies to hold in-kind assets and such in-kind assets required to be held shall be counted as part of the reserves, capital and surplus of such TEFFI insurance company. A TEFFI insurance company is also permitted to hold equity interests in an affiliated TEFFI.

Section 6 amends K.S.A. 40-4353 to include section 1 as part of the captive insurance act.

SB 377 becomes effective upon publication in the Kansas register.

The senate committee on financial institutions and insurance amended the bill to make technical amendments on pages 2 and 5 and to add language on page 6 permitting a TEFFI insurance company to do business in any other state or territory of the United States and language stating that a policy issued connection with an affiliated fidfin trust or transaction shall respect the form, treatment and character of such trust or transaction under the laws of Kansas notwithstanding the treatment or characterization of such transaction under GAAP or for tax purposes. *Note: These amendments are the same as the amendments this committee made to HB 2547.*

The senate passed SB 377 by a vote of 36-3 on February 15, 2022