

Journal of the Senate

SIXTY-FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, May 4, 2017, 10:00 a.m.

The Senate was called to order by Vice President Jeff Longbine.
The roll was called with 40 senators present.
Invocation by Reverend Cecil T. Washington:

Lord, today has been dubbed "The National Day of Prayer." And outside of our power to control, there are global, national, statewide, local and personal concerns prompting us to pray. In fact, You said in Philippians 4:6, that we should pray about everything. So, Lord, as we navigate the many serious roads we must travel, keep us humble enough to see the need for a spiritual GPS system. You said in Proverbs 14:12 and 16:25, that there's a way that seems right, but it has a dead end. So, Lord we need tracking from two perspectives; from the human and from the Divine. From the human stand point, we need the determination to be tracking You...following Your guidance...stopping, turning and going as You direct us. And from the Divine stand point, when we miss, ignore or even rebel against Your guidance, we need You to help us know that You're still there to lead us; that You see where we are versus where we should be, and You're recalculating for us, giving us the new stops and turns that we need to get back on the right track. Thanks Lord, for the privilege, power, pleasure and preference of prayer! In Jesus' Name, Amen and Amen.

The Pledge of Allegiance was led by Vice President Longbine.

POINT OF PERSONAL PRIVILEGE

Senator Taylor rose on a Point of Personal Privilege to recognize Susan Givens, Kansas 2017 Superintendent of the Year. She is currently Superintendent of the El Dorado school district. Susan is the wife of Senator Bruce Givens.

The senate honored her with a standing ovation.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to Committee as indicated:

Commerce: **HB 2184**.

MESSAGE FROM THE HOUSE

The House adopts the Conference Committee report on **SB 16**.
The House adopts the Conference Committee report on **SB 149**.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Kelly and V. Schmidt introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1743—

A RESOLUTION congratulating and commending Zeke Metz for his accomplishments during the 2016-2017 swimming season.

WHEREAS, Zeke Metz is a junior swimmer at Seaman High School in Topeka, Kansas; and

WHEREAS, Zeke had a tremendous swimming season, which earned him many awards, including All-City, All-Centennial League and All-State recognition; and

WHEREAS, Zeke broke school records in the 200 freestyle, 200 individual medley, 500 freestyle, 100 backstroke, 200 freestyle relay and 400 freestyle relay, and he set the City and Centennial League records for the 500 freestyle; and

WHEREAS, At the Centennial League competition in Emporia, Zeke won individual medals in the 200 individual medley and the 500 freestyle, and he won three more golds as a member of the 200 freestyle relay, 400 freestyle relay and 200 medley relay; and

WHEREAS, During the state competition in Topeka, Zeke won first place in the 500 freestyle, second place in the 200 freestyle, third place in the 200 freestyle relay and fifth place in the 400 freestyle relay: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate Zeke Metz for his accomplishments during the 2016-2017 swimming season, and we wish him all the best as he prepares for the upcoming 2017-2018 swimming season; and

Be it further resolved: That the Secretary of the Senate shall send five enrolled copies of this resolution to Senator Kelly.

On emergency motion of Senator Kelly **SR 1743** was adopted unanimously.

Guests introduced were Natalie Haag, Ken Metz, Dixie Haag, Rod Garman, Bob Shearer and Brad Dietz.

The senate honored Zeke and guests with a standing ovation.

Senators Kelly, Hensley and V. Schmidt introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1744—

A RESOLUTION congratulating and commending the Washburn University debate team.

WHEREAS, The Washburn University debate team competed in the 24th Annual National Parliamentary Debate Association National Championship held in Colorado Springs, Colorado, and they returned with two teams named co-champions: Ryan Kelly and Kaitlyn Bull; and Will Starks and Quintin Brown; and

WHEREAS, For the fourth time in eight years, the debate team won the Squad Sweepstakes National Championship, which is awarded to teams based on their success throughout the entire debate season; and

WHEREAS, The debate team scored victories over 63 other nationally-ranked, parliamentary-style debate teams to bring home top honors from the invitation-only 17th

Annual National Parliamentary Tournament of Excellence (NPTE), which is hosted by Colorado State University. This is the second time the debate team has won this national tournament; and

WHEREAS, At the NPTE, three Washburn students were ranked among the best 100 collegiate parliamentary debaters in the United States: Senior Kaitlyn Bull, second; senior Quintin Brown, third; and senior Ryan Kelly, fourth; and

WHEREAS, The debate team defeated 26 other teams from 13 universities to win first and second place at the inaugural National Round Robin of Parliamentary Debate Competition hosted by William Jewell College; and

WHEREAS, The debate team is sponsored and coached by Dr. Kevin O'Leary, Director of Forensics and lecturer of Communications Studies at Washburn University: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate the Washburn University debate team for their success during the 2016-2017 season, and we commend them for the outstanding way in which they represent Washburn University and the State of Kansas; and

Be it further resolved: That the Secretary of the Senate shall send 10 enrolled copies of this resolution to Senator Kelly.

On emergency motion of Senator Kelly **SR 1744** was adopted unanimously.

On motion of Senator Denning, the Senate recessed until the sound of the gavel.

The senate met pursuant to recess with President Susan Wagle in the chair.

ORIGINAL MOTION

Senator Denning moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 14, SB 16**.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 14** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee of the Whole amendments, as follows:

On page 7, by striking all in lines 35 through 38;

On page 11, following line 29, by inserting:

"Sec. 3. K.S.A. 2016 Supp. 40-4905 is hereby amended to read as follows: 40-4905. (a) Subject to the provisions of K.S.A. 2016 Supp. 40-4904, and amendments thereto, it shall be unlawful for any person to sell, solicit or negotiate any insurance within this state unless such person has been issued a license as an insurance agent in accordance with this act.

(b) Any person applying for a resident insurance agent license shall make application on a form prescribed by the commissioner. The applicant shall declare under penalty of perjury that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief. Before approving the

application, the commissioner shall determine that the applicant:

(1) Is at least 18 years of age;

(2) has not committed any act that is grounds for denial pursuant to this section or suspension or revocation pursuant to K.S.A. 2016 Supp. 40-4909, and amendments thereto;

(3) has paid a nonrefundable fee in the amount of \$30; and

(4) has successfully passed the examination for each line of authority for which the applicant has applied.

(c) If the applicant is a business entity, then the commissioner shall make the following additional determinations in addition to those required by subsection (a):

(1) The name and address of a licensed agent who shall be responsible for the business entity's compliance with the insurance laws of this state and the rules and regulations promulgated thereunder;

(2) that each officer, director, partner and employee of the business entity who acts as an insurance agent is licensed as an insurance agent;

(3) that the business entity has disclosed to the department all of its officers, directors and partners whether or not such officers, directors, partners and employees are licensed as insurance agents; and

(4) that the business entity has disclosed to the department each officer, director, partner and employee who is licensed as an insurance agent.

(d) Any business entity which acts as an insurance agent and holds a direct agency appointment from an insurance company shall be required to obtain an insurance agent license.

(e) The commissioner may require the applicant to furnish any document or other material reasonably necessary to verify the information contained in an application.

(f) Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide a program of instruction that may be approved by the commissioner to each individual employed by or acting on behalf of such insurer to sell, solicit or negotiate limited line credit insurance.

(g) (1) Each licensed insurance agent shall notify the commissioner of any officer, director, partner or employee of such insurance agent who:

(A) Is licensed as an individual insurance agent; and

(B) was not disclosed in such insurance agent's application for a license or any renewal thereof.

(2) Each licensed insurance agent shall notify the commissioner of any of its officers, directors, partners or employees who:

(A) Have terminated such relationship as an officer, director, partner or employee of such insurance agent; and

(B) has been previously disclosed in such insurance agent's application for a license or any renewal thereof.

(3) Each licensed insurance agent shall notify the commissioner within 30 working days of occurrence of any event required to be reported under paragraphs (1) or (2) of this subsection. Failure to provide the commissioner with the information required by this subsection shall subject the licensee to a monetary penalty of \$10 per day for each working day the required information is late subject to a maximum of \$50 per person per licensing year.

(h) Any applicant whose application for a license; is denied shall be given an

opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

(i) (1) The commissioner may require a person applying for a resident insurance agent license to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal arrests and convictions in this state or other jurisdictions. The commissioner is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. Local and state law enforcement officers and agencies shall assist the commissioner in the taking and processing of fingerprints of applicants and shall release all records of an applicant's arrests and convictions to the commissioner.

(2) The commissioner may conduct, or have a third party conduct, a background check on a person applying for a resident insurance agent license.

(3) Whenever the commissioner requires fingerprinting, a background check, or both, any associated costs shall be paid by the applicant.

(4) The commissioner may use the information obtained from a background check, fingerprinting and the applicant's criminal history only for purposes of verifying the identification of any applicant and in the official determination of the fitness of the applicant to be issued a license as an insurance agent in accordance with this act.

(5) A person applying for a resident insurance agent license who has been fingerprinted and has submitted to a state and national criminal history record check within the past 12 months in connection with the successful issuance or renewal of any other state-issued license may submit proof of such good standing to the commissioner in lieu of submitting to the fingerprinting and criminal history record checks described in subsections (i)(1) and (i)(2).

Sec. 4. K.S.A. 2016 Supp. 40-4905 is hereby repealed.;

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after the first "to"; in line 2, by striking all before the semicolon and inserting "the regulation of sales thereof; insurance agent licensure"; also in line 2, after "40-4903" by inserting "and 40-4905"; in line 3, by striking "section" and inserting "sections";

And your committee on conference recommends the adoption of this report.

JENE VICKREY

WILLIE DOVE

CINDY NEIGHBOR

Conferees on part of House

JEFF LONGBINE

RICK BILLINGER

LYNN ROGERS

Conferees on part of Senate

Senator Longbine moved the Senate adopt the Conference Committee Report on **SB 14**.

On roll call, the vote was: Yeas 37; Nays 3; Present and Passing 0; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Bowers, Denning, Doll, Estes,

Faust-Goudeau, Fitzgerald, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kelly, Kerschen, Longbine, Lynn, McGinn, Olson, Petersen, Pettey, Pyle, Rogers, V. Schmidt, Skubal, Suellentrop, Sykes, Taylor, Wagle, Wilborn.

Nays: Masterson, Pilcher-Cook, Tyson.

The Conference Committee Report was adopted.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 16** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee of the Whole amendments, as follows:

On page 14, following line 15, by inserting:

"Sec. 4. On and after January 1, 2018, K.S.A. 2016 Supp. 40-221a is hereby amended to read as follows: 40-221a. (a) ~~Any insurance company organized under the laws of this state may (1) with the consent of the commissioner of insurance, cede all of its risks to any other solvent insurance company authorized to transact business in this state or accept all of the risks of any other company, (2) accept all or any part of an individual risk or all or any part of a particular class of risks which it is authorized to insure, and (3) cede all or any part of an individual risk or all or any part of a particular class of risks to another solvent insurer or insurers having the power to accept such reinsurance.~~

~~(b) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss and unearned premium reserves on such ceded risks to the extent reinsured by an insurer or insurers authorized to transact business in this state, but such credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken in an amount not exceeding:~~

~~(1) The amount of deposits by, and funds withheld from, the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for such purposes in a qualified United States financial institution, if withdrawals from such trust cannot be made without the consent of the ceding company;~~

~~(2) the amount of a clean and irrevocable letter of credit issued by a qualified United States financial institution if such letter of credit is initially issued for a term of at least one year and by its terms is automatically renewed at each expiration date for at least an additional one-year term unless at least 30 days prior written notice of intention not to renew is given to the ceding company by the issuing qualified United States financial institution or the assuming company and provided that such letter of credit is issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under paragraph (1) of this subsection; or~~

~~(3) the amount of loss and unearned premium reserves on such ceded risks to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in (b)(3)(D), for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that~~

required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liability attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000. In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(A) Such trust must be in a form approved by the commissioner of insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States ceding insurers, their assigns and successors in interest. The trust and the assuming group or insurer shall be subject to examination as determined by the commissioner. The trust, described herein, must remain in effect for as long as the assuming group or insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(B) No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(C) The credit authorized under subsection (b)(3) shall not be allowed unless the assuming group or insurer agrees in the reinsurance agreements:

(i) That in the event of the failure of the assuming group or insurer to perform its obligations under the terms of the reinsurance agreement, the assuming group or insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

(ii) to designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company;

(iii) This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation to do so is created in the agreement.

(D) (i) For the purposes of paragraphs (1) and (3) of subsection (b), a "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution

that:

(aa) ~~Is organized, or (in the case of a U.S. branch or agency office of a foreign banking organization) licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and~~

(bb) ~~is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.~~

(ii) ~~For the purposes of paragraph (2) of subsection (b), "qualified United States financial institution" means, for the purpose of those provisions of this law specifying those institutions that are eligible to issue a letter of credit, an institution that:~~

(aa) ~~Is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;~~

(bb) ~~is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and~~

(cc) ~~has been determined by the insurance commissioner to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.~~

~~In making determinations under this clause, the commissioner may consult with the securities valuation office of the national association of insurance commissioners.~~

(c) ~~No credit shall be allowed, as an admitted asset or deduction from liability, to any ceding insurer organized under the laws of this state for reinsurance, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of the liability of the ceding company under the contract or contracts reinsured, as approved by the liquidation court, without diminution because of the insolvency of the ceding company. Any reinsurance agreement entered into with a domestic insurer which may be canceled on less than 90 days' notice, and which cancellation would constitute a material cancellation as defined by K.S.A. 40-2,156a, and amendments thereto, must provide in the reinsurance agreement, in substance, for a run-off of the reinsurance in force at the date of cancellation, unless the agreement is canceled for nonpayment of premium or fraud in the inducement. Reinsurance payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (1) Where the reinsurance contract or policy reinsured specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or (2) where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.~~

(d) ~~The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a~~

result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraphs (1), (2), (3), (4), (5) or (6). Credit shall be allowed under paragraphs (1), (2) or (3) of this subsection only as respects cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed only under paragraphs (3) or (4) of this subsection if the applicable requirements of paragraph (7) have been satisfied.

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state. In order to be eligible for accreditation, an assuming insurer must:

(A) File with the commissioner evidence of the assuming insurer's submission to this state's jurisdiction;

(B) submit to this state's authority to examine the assuming insurer's books and records;

(C) be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;

(D) file annually with the commissioner a copy of the assuming insurer's annual statement filed with the insurance department of the assuming insurer's state of domicile and a copy of the assuming insurer's most recent audited financial statement; and

(E) demonstrate to the satisfaction of the commissioner that it has adequate financial capacity to meet the assuming insurer's reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of the assuming insurer's application if it maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and its accreditation has not been denied by the commissioner within 90 days after submission of its application.

(3) (A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(ii) submits to the authority of this state to examine the assuming insurer's books and records.

(B) The requirement of subsection (a)(3)(A)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding.

company system.

(4) (A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in subsection (c)(2), for the payment of the valid claims of the assuming insurer's United States ceding insurers, their assigns and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination:

(B) (i) credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by either of the following:

(a) The commissioner of the state where the trust is domiciled; or

(b) the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(ii) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer's beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to the trust's assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

(iii) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the commissioner in writing the balance of the trust and the listing of the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(C) The following requirements apply to the following categories of the assuming insurer:

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except as provided in subsection (a)(4)(C) (ii).

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the

incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus shall not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust;

(iii) (a) in the case of a group including incorporated and individual unincorporated underwriters, all of the following requirements are met:

(1) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(2) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this act, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(3) in addition to the trusts described in subsections (a)(4)(B)(iii)(a)(1) and (a)(4)(B)(iii)(a)(2), the group shall maintain in trust a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(b) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members of the group; and

(c) within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the group.

(iv) In the case of a group of incorporated underwriters under common administration, the group shall meet all of the following requirements:

(a) Have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation;

(b) maintain an aggregate policyholders' surplus of at least \$10,000,000,000;

(c) maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(d) in addition, maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and

(e) within 90 days after the group's financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and the reinsurer

secures its obligations in accordance with the following requirements:

(A) In order to be eligible for certification, the assuming insurer shall meet all of the following requirements:

(i) Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection (a)(5)(C);

(ii) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to regulation;

(iii) maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner pursuant to regulation;

(iv) agree to submit to the jurisdiction of this state, appoint the commissioner as the assuming insurer's agent for service of process in this state, and agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment;

(v) agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and

(vi) satisfy any other requirements for certification deemed relevant by the commissioner.

(B) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of subsection (a)(5)(A) and all of the following requirements:

(i) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;

(ii) the incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members of the association; and

(iii) within 90 days after the association's financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member. If a certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the association shall be provided instead.

(C) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(i) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States.

In order to be recognized as a qualified jurisdiction, a jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction shall not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

(ii) A list of qualified jurisdictions shall be published through the national association of insurance commissioners' process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner recognizes a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under rules and regulations.

(iii) United States jurisdictions that meet the requirement for accreditation under the national association of insurance commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.

(iv) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(D) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner pursuant to rules and regulations. The commissioner shall publish a list of all certified reinsurers and their ratings.

(E) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with the certified reinsurer's rating, as specified in rules and regulations promulgated by the commissioner.

(i) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of subsection (b), or in a multi-beneficiary trust in accordance with subsection (a)(4), except as otherwise provided in this subsection.

(ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (a)(4), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multi-beneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection (a)(4). It shall be a condition to the grant of certification under subsection (a) (5) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner who has principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, any deficiency of any other such trust account out of the remaining surplus of the terminated trust account.

(iii) The minimum trustee surplus requirements provided in subsection (a)(4) are not applicable with respect to a multi-beneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trustee surplus of \$10,000,000.

(iv) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the commissioner shall reduce the allowable

credit by an amount proportionate to the deficiency, and the commissioner has the discretion to impose further reductions in allowable credit upon finding there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(v) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.

(a) As used in this paragraph, the term "terminated" includes revocation, suspension, voluntary surrender and inactive status.

(b) If the commissioner continues to assign a higher rating as permitted by other provisions of this subsection, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(F) If an assuming insurer applying for certification as a reinsurer in this state has been certified as a reinsurer in an another jurisdiction accredited by the national association of insurance commissioners, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

(G) A certified reinsurer that ceases to assume new business in this state may request to maintain the reinsurer's certification in inactive status in order to continue to qualify for a reduction in amount of security required for the reinsurer's in force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(6) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that does not meet the requirements of subsections (a)(1) through (a)(5), but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) If the assuming insurer is not licensed, accredited or certified to transact insurance or reinsurance in this state, the credit permitted by subsections (a)(3) and (a)(4) of this section shall not be allowed, unless the assuming insurer agrees in the reinsurance agreement to do all of the following:

(A) (i) In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, will: Submit to the jurisdiction of any court of competent jurisdiction in any state of the United States; comply with all requirements necessary to give the court jurisdiction; and abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) the assuming insurer will designate the commissioner or a designated attorney as its true and lawful attorney to receive lawful process in any action, suit or proceeding instituted by or on behalf of the ceding insurer.

(B) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if the obligation is created in the agreement.

(8) If the assuming insurer does not meet the requirements of subsection (a)(1), (a)(2) or (a)(3), the credit permitted by subsection (a)(4) or (a)(5) shall not be allowed unless the assuming insurer agrees in a trust agreement to the following conditions:

(A) Notwithstanding any other provisions in the trust instrument, if the trust fund is

inadequate because the trust fund contains an amount less than the amount required by subsection (a)(4)(C), or if the grantor of the trust has been declared insolvent or has been placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of the trust's state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer all of the assets of the trust fund to the commissioner with regulatory oversight over the trust.

(B) The assets shall be distributed and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(C) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets of the trust or part of those assets shall be returned by the commissioner with regulatory oversight over the trust to the trustee for distribution in accordance with the trust agreement.

(D) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with the provisions of this subsection.

(9) Credit for reinsurance ceded to a certified reinsurer is limited to reinsurance contracts entered or renewed on or after the effective date of the certification of the assuming insurer by the commissioner.

(10) If an accredited or certified reinsurer ceases to meet the requirements of this section for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

(A) The commissioner shall give the reinsurer notice and opportunity for a hearing prior to such suspension or revocation. The suspension or revocation shall not take effect until after the commissioner's order on hearing, unless one of the following applies:

(i) The reinsurer waives its right to a hearing;

(ii) the commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or by the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subsection (a)(5)(F); or

(iii) the commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(B) While a reinsurer's accreditation or certification is suspended, a reinsurance contract issued or renewed after the effective date of the suspension does not qualify for credit, except to the extent that the reinsurer's obligations under the reinsurance contract are secured in accordance with subsection (b). If a reinsurer's accreditation or certification is revoked, credit for reinsurance shall not be granted after the effective date of the revocation, except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (a)(5)(A) or (a)(5)(B).

(11) (A) A domestic ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds 50% of the domestic

ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(B) A domestic ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer's gross written premium in the prior calendar year, or after the domestic ceding insurer has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (a) shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subsection (c)(2). The security may be in the form of any of the following:

(1) Cash;

(2) a security listed by the securities valuation office of the national association of insurance commissioners, including those securities deemed exempt from filing as defined by the purposes and procedures manual of the national association of insurance commissioners investment analysis office, and qualifying as admitted assets;

(3) (A) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in subsection (c)(1), effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of the ceding insurer's annual statement; or

(B) a letter of credit meeting applicable standards of issuer acceptability as of the date of the letter of credit's issuance, or confirmation, shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(4) any other form of security acceptable to the commissioner.

(c) (1) For purposes of subsection (b)(3), a "qualified United States financial institution" means an institution that meets all of the following requirements:

(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(B) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(C) has been determined by either the commissioner or the securities valuation office of the national association of insurance commissioners to meet the standards of financial condition and standing as are considered necessary and appropriate to regulate

the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) For purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, a "qualified United States financial institution" means an institution that meets all of the following requirements:

(i) Is organized, or in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and

(ii) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(d) The commissioner is hereby authorized to adopt any rules and regulations necessary to implement the provisions of this law. Such rules and regulations shall be adopted no later than January 1, 2019.

(e) This section shall apply to all cessions under reinsurance contracts that occur on or after January 1, 2018.";

Also on page 14, following line 16; by inserting:

"Sec. 6. On and after January 1, 2018, K.S.A. 2016 Supp. 40-221a is hereby repealed.";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after the first semicolon; by striking lines 2 through 4; in line 5, by striking all before the semicolon and inserting "relating to the insurance holding company act; credit for reinsurance; exemption of certain service contracts from regulation as insurance"; also in line 5, after "40-201a" by inserting "and 40-221a"; in line 6, by striking "section" and inserting "sections";

And your committee on conference recommends the adoption of this report.

JENE VICKREY
WILLIE DOVE
CINDY NEIGHBOR

Conferees on part of House

JEFF LONGBINE
RICK BILLINGER
LYNN ROGERS

Conferees on part of Senate

Senator Longbine moved the Senate adopt the Conference Committee Report on **SB 16**.

On roll call, the vote was: Yeas 35; Nays 4; Present and Passing 1; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Bowers, Denning, Doll, Estes, Faust-Goudeau, Fitzgerald, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kelly, Kerschen, Lynn, McGinn, Olson, Petersen, Pettey, Rogers, V. Schmidt, Skubal, Sykes, Taylor, Tyson, Wagle, Wilborn.

Nays: Masterson, Pilcher-Cook, Pyle, Suellentrop.

Present and Passing: Longbine.

The Conference Committee Report was adopted.

On motion of Senator Denning, the Senate recessed until the sound of the gavel.

The senate met pursuant to recess with Senator Julia Lynn in the chair.

On motion of Senator Hardy the Senate adjourned until 10:00 a.m., Friday, May 5, 2017.

CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks.*
COREY CARNAHAN, *Secretary of the Senate.*

