

HOUSE BILL No. 2177

By Committee on Insurance

2-7

1 AN ACT concerning ~~life~~ insurance; relating to fixed index annuity  
2 contracts; ~~pertaining to the~~ accounting treatment of certain derivative  
3 instruments; ~~indexed product reserves~~ **risk-based capital**  
4 **requirements; version of instructions in effect; amending K.S.A. 2018**  
5 **Supp. 40-2c01 and repealing the existing section.**  
6

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

8 *New* Section 1. (a) As used in this section:

9 (1) "Eligible derivative asset" means an option, as defined in K.S.A.  
10 40-2b25, and amendments thereto, that is purchased or written to hedge  
11 the growth in interest credited to an indexed product as a direct result of  
12 changes in each related external index.

13 (2) "External index" means a list of securities, commodities or other  
14 financial instruments that is published or disseminated by a source other  
15 than an insurance company, including Standard & Poor's, nasdaq and dow  
16 jones.

17 (3) "Hedging transaction" has the meaning specified in K.S.A. 40-  
18 2b25, and amendments thereto.

19 (4) "Indexed annuity products" means contracts that:

20 (A) Provide a minimum guaranteed interest accumulation on a  
21 portion of all premium payments; and

22 (B) include provisions under which interest is credited based upon the  
23 performance of one or more external indices.

24 (5) "Indexed life products" means life insurance policies that:

25 (A) Provide a minimum guaranteed interest accumulation on a  
26 portion of all premium payments; and

27 (B) include provisions under which interest is credited based upon the  
28 performance of one or more external indices.

29 (6) "Indexed products" means indexed annuity products and indexed  
30 life products.

31 (7) "Interest-crediting period" means the length of time over which  
32 the performance of each external index is measured for purposes of  
33 determining the amount of interest credited under an indexed product.

34 (b) (1) Any insurance company may account for eligible derivative  
35 assets at amortized cost if the insurance company can demonstrate that  
36 such eligible derivative assets meet the following criteria for an economic

1 hedge:

2 (A) At inception of the hedge, or as of the date that an insurance  
3 company begins using the accounting practices set forth herein, if later,  
4 there must be a formal documentation of the economic hedging  
5 relationship and the insurance company's risk management objective and  
6 strategy for undertaking the economic hedge, including identification of  
7 the specific eligible derivative assets purchased to hedge indexed products,  
8 the nature of the particular risk being hedged, and how the eligible  
9 derivative assets' effectiveness will be assessed, retrospectively and  
10 prospectively, on a qualitative basis; and

11 (B) at inception of the hedge, or as of the date that an insurance  
12 company begins using the accounting practices set forth herein, if later,  
13 and at the end of each quarterly reporting period thereafter, the insurance  
14 company must maintain documentation that the economic hedge is  
15 expected to be and continues to be highly effective as defined by the  
16 criteria in subparagraph (A) in achieving offsetting changes in fair value  
17 attributable to the hedged risk during the period that the economic hedge is  
18 designated.

19 (2) Eligible derivative assets purchased or written with a year or less  
20 to maturity or expiration shall not be required to be amortized.

21 (c) (1) The following accounting practices shall apply to the indexed  
22 annuity product reserves:

23 (A) Indexed annuity product reserve calculations shall be based on  
24 actuarial guideline XXXV assuming the market value of the eligible  
25 derivative assets associated with the current interest crediting period is  
26 zero, regardless of the observable market for the eligible derivative assets.

27 (B) At the conclusion of each interest-crediting period, the interest  
28 credited to an indexed annuity product shall be reflected in the indexed  
29 annuity product reserve as realized, based on the actual performance of the  
30 relevant external index or external indices.

31 (2) The accounting practices specified in this subsection shall not  
32 apply to the calculation of indexed life product reserves.

33 (d) (1) If an insurance company elects to use the alternative  
34 accounting practices prescribed herein, it shall report quarterly to the  
35 commissioner of insurance, for analysis purposes, the market value of its  
36 eligible derivative assets and what the actuarial guideline XXXV reserve  
37 would be, using the market value of such eligible derivative assets.

38 (2) An insurance company that elects to use the alternative  
39 accounting practices prescribed herein shall not change its accounting  
40 practices back to those that would apply in the absence of the statute  
41 without the prior approval of the commissioner of insurance.

42 (e) The commissioner of insurance shall have the power to adopt all  
43 reasonable rules and regulations necessary to implement this section.

1        *Sec. 2. K.S.A. 2018 Supp. 40-2c01 is hereby amended to read as*  
2 *follows: 40-2c01. As used in this act:*

3        (a) *"Adjusted RBC report" means an RBC report which has been*  
4 *adjusted by the commissioner in accordance with K.S.A. 40-2c04, and*  
5 *amendments thereto.*

6        (b) *"Corrective order" means an order issued by the commissioner*  
7 *specifying corrective actions which the commissioner has determined*  
8 *are required to address an RBC level event.*

9        (c) *"Domestic insurer" means any insurance company or risk*  
10 *retention group which is licensed and organized in this state.*

11        (d) *"Foreign insurer" means any insurance company or risk*  
12 *retention group not domiciled in this state which is licensed or registered*  
13 *to do business in this state pursuant to article 41 of chapter 40 of the*  
14 *Kansas Statutes Annotated or K.S.A. 40-209, and amendments thereto.*

15        (e) *"NAIC" means the national association of insurance*  
16 *commissioners.*

17        (f) *"Life and health insurer" means any insurance company*  
18 *licensed under article 4 or 5 of chapter 40 of the Kansas Statutes*  
19 *Annotated, and amendments thereto, or a licensed property and casualty*  
20 *insurer writing only accident and health insurance.*

21        (g) *"Property and casualty insurer" means any insurance company*  
22 *licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the*  
23 *Kansas Statutes Annotated, and amendments thereto, but shall not*  
24 *include monoline mortgage guaranty insurers, financial guaranty*  
25 *insurers and title insurers.*

26        (h) *"Negative trend" means, with respect to a life and health*  
27 *insurer, a negative trend over a period of time, as determined in*  
28 *accordance with the "trend test calculation" included in the RBC*  
29 *instructions defined in subsection (j).*

30        (i) *"RBC" means risk-based capital.*

31        (j) *"RBC instructions" means the risk-based capital instructions*  
32 *promulgated by the NAIC, which are in effect on December 31, 2017-*  
33 *2018, or any later version promulgated by the NAIC as may be adopted*  
34 *by the commissioner under K.S.A. 2018 Supp. 40-2c29, and amendments*  
35 *thereto.*

36        (k) *"RBC level" means an insurer's company action level RBC,*  
37 *regulatory action level RBC, authorized control level RBC, or*  
38 *mandatory control level RBC where:*

39        (1) *"Company action level RBC" means, with respect to any*  
40 *insurer, the product of 2.0 and its authorized control level RBC;*

41        (2) *"regulatory action level RBC" means the product of 1.5 and its*  
42 *authorized control level RBC;*

43        (3) *"authorized control level RBC" means the number determined*

1 *under the risk-based capital formula in accordance with the RBC*  
2 *instructions; and*

3 *(4) "mandatory control level RBC" means the product of 0.70 and*  
4 *the authorized control level RBC.*

5 *(l) "RBC plan" means a comprehensive financial plan containing*  
6 *the elements specified in K.S.A. 40-2c06, and amendments thereto. If the*  
7 *commissioner rejects the RBC plan, and it is revised by the insurer, with*  
8 *or without the commissioner's recommendation, the plan shall be called*  
9 *the "revised RBC plan."*

10 *(m) "RBC report" means the report required by K.S.A. 40-2c02,*  
11 *and amendments thereto.*

12 *(n) "Total adjusted capital" means the sum of:*

13 *(1) An insurer's capital and surplus or surplus only if a mutual*  
14 *insurer; and*

15 *(2) such other items, if any, as the RBC instructions may provide.*

16 *(o) "Commissioner" means the commissioner of insurance.*

17 *Sec. 3. K.S.A. 2018 Supp. 40-2c01 is hereby repealed.*

18 *Sec. ~~2~~ 4. This act shall take effect and be in force from and after its*  
19 *publication in the statute book.*