

Journal of the Senate

FORTY-THIRD DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, March 16, 2022, 2:30 p.m.

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

Guidelines In The Selection of Leaders
Exodus 18:19-23, Romans 13:1-7

Heavenly Father, in Exodus 18:19-23, You used Moses' father-in-law, Jethroe, to show Moses how to select quality leaders, officials that would lead in harmony with Your will and Your ways. Please remind us of the need for those qualities today! For people to respect and follow their leaders You require that the officials be good examples. The advice You had Jethroe give to Moses focused in three areas. In Romans 13:1-7, You said that all human authority comes from You and should represent You in the lives of Your people.

Therefore, in Exodus 18:20, You want the leaders of Your people first, to study and know the laws compatible with Your Word. But to also second, practice them, making them part of their lives, so their walk will match their talk. So those who learn the laws and walk the walk are then qualified to third, be given the work to work.

Moses followed Jethroe's advice resulting in Your people being blessed and living their lives in peace. Lord, let that be the case here. You've given us Your Word. You've told us how to walk. Now guide us in the work, You'd have us to do.

Again, I come to You in the Name of Jesus. Amen!

The Pledge of Allegiance was led by President Masterson.

SPECIAL GUEST

Judy Naillon, guest of Senator Faust-Goudeau, is a member of the Wichita Symphony Orchestra, teaches violin and piano, played a combined rendition of *Home On the Range* and *Amazing Grace* for the Senate.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 569, AN ACT concerning the division of tourism; relating to the transfer of powers, duties and functions from the department of wildlife and parks to the department of commerce; making changes in references and transfers to state officers with respect thereto; amending K.S.A. 32-701, 32-801, 32-802, 32-805, 32-806, 32-

807, 32-809, 32-832, 32-833, 32-834, 32-835, 32-836, 32-837, 32-839, 32-840, 32-844, 32-845, 32-846, 32-869, 32-873, 32-874, 32-874a, 32-874b, 32-874c, 32-874d, 32-874e, 32-886, 32-887, 32-888, 32-906, 32-918, 32-930, 32-932, 32-938, 32-960a, 32-966, 32-976, 32-996, 32-997, 32-998, 32-999, 32-9,100, 32-1001, 32-1004, 32-1005, 32-1031, 32-1032, 32-1040, 32-1041, 32-1049, 32-1049a, 32-1050, 32-1051, 32-1052, 32-1053, 32-1054, 32-1062, 32-1063, 32-1064, 32-1066, 32-1074, 32-1075, 32-1077, 32-1102, 32-1112, 32-1129, 32-1174, 32-1203, 32-1306, 32-1308, 32-1310, 32-1401, 32-1402, 32-1403, 32-1410, 32-1411, 32-1412, 32-1413, 32-1420, 32-1421, 32-1422, 32-1432, 32-1433, 32-1438, 41-719, 47-2101, 65-189e, 65-3424b, 65-5703, 68-406, 74-134, 74-5,133, 74-2622, 74-3322, 74-4722, 74-4911f, 74-5005, 74-5602, 74-6614, 74-7901, 74-9201, 75-1253, 75-2720, 75-2935, 75-3339, 75-37,121, 75-3907, 75-3908, 75-3910, 76-463, 77-415, 77-421, 79-201a, 79-3221e, 79-3221h, 79-32,203, 79-5212, 82a-209, 82a-220, 82a-326, 82a-903, 82a-1501, 82a-2001 and 82a-2204 and K.S.A. 2021 Supp. 2-1314d, 2-2473, 8-134, 19-2803b, 19-2803d, 19-2817, 19-2822, 19-2835, 19-2836, 19-2839, 19-2844, 19-2844a, 19-2855, 19-2868, 19-2873, 19-2894, 19-3543, 20-302b, 21-5810, 21-6308a, 21-6416, 22-2512, 49-408, 58-3221, 58-3225 and 79-3234 and repealing the existing sections; also repealing K.S.A. 32-810, 32-811, 32-812, 32-813, 32-814, 32-815, 32-816 and 32-818, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Redistricting: **SB 568**.

Transportation: **SB 567**.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

Sub SB 444, AN ACT making and concerning appropriations for the fiscal years ending June 30, 2022, June 30, 2023, June 30, 2024, June 30, 2025, June 30, 2026, and June 30, 2027, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements, procedures and acts incidental to the foregoing; amending K.S.A. 2021 Supp. 2-223, 12-1775a, 12-5256, 17-12a601, 72-5462, 74-50,107, 74-99b34, 75-2263, 75-6707, 76-775, 76-7,107, 79-2959, 79-2964, 79-3425i, 79-34,171 and 79-4804 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 23; Nays 14; Present and Passing 3; Absent or Not Voting 0.

Yeas: Alley, Baumgardner, Billinger, Bowers, Claeys, Dietrich, Erickson, Fagg, Gossage, Hawk, Kerschen, Kloos, Longbine, Masterson, McGinn, O'Shea, Olson, Petersen, Ryckman, Steffen, Thompson, Warren, Wilborn.

Nays: Corson, Doll, Faust-Goudeau, Hilderbrand, Holland, Holscher, Peck, Pittman, Pyle, Straub, Suellentrop, Sykes, Tyson, Ware.

Present and Passing: Francisco, Haley, Pettey.

The substitute bill passed, as amended.

EXPLANATION OF VOTE

Mr. President: Providence blessed us with a bountiful harvest. It is inexcusable and immoral that our Governor, this body and our Federal Government choose to ignore what is statutorily and ethically the right thing to do and not turn our back on our children of our great State with special needs. Kids by no fault of their own, need assistance to become what they most want, being a productive citizen to our country, state and their community. The bottom line, we as a government have failed these kids.

—JOHN DOLL

Senators Corson, Francisco and Ware request the record to show they concur with the "Explanation of Vote" offered by Senator Doll on **Sub SB 444**

Mr. President: I ask to be recorded as a "PASS" on **Senate Substitute for Senate Bill 444**. I choose to pass on a bill when I support much of what is in a bill but would want to see some changes before I vote "AYE". I support many of the proposed expenditures, but am very concerned that this bill, like several others we have passed this year, prioritizes future debt payments over addressing the needs of today's Kansans. For the first year since I was elected to the Kansas Senate, there is enough funding to responsibly take the state portion of the sales tax off food. We can do that this year, and we should.—MARCI FRANCISCO

Senator Pettey requests the record to show she concurs with the "Explanation of Vote" offered by Senator Francisco on **Sub SB 444**.

Mr. President: A "yes" vote does not come easily from me for a budget bill. But, the carryover from last year plus the significant debt reduction was impressive. We did keep the projected spending increase year-over-year to less than inflation. Next year, I challenge us to keep spending flat as government size and overreach remain out of control.—MARK STEFFEN

Senator Thompson requests the record to show he concurs with the "Explanation of Vote" offered by Senator Steffen on **Sub SB 444**.

Mr. President: To the average Kansan, this budget appears to make up for the years of austerity our state has been forced to endure because of reckless tax experiments that slashed available funds and decimated our agencies, our schools, and our state's overall standing. There are many appealing parts of this budget, and it's difficult to argue against giving our agencies more than they asked for, for giving retirees more than the governor's plan to fully fund KPERS requires for this fiscal year. That is by design. The budget goes above and beyond in these areas and conveniently ensures that there's not enough money left over to deliver economic relief to every Kansan, to allow our higher education institutions to freeze tuition for students in a tumultuous economy, to ADD to our state general fund – and help struggling Kansans and hospitals – by expanding Medicaid. We have the means to do better, and Kansas families deserve better. I vote "no."—DINAH SYKES

Senators Corson, Francisco, Pettey and Ware request the record to show they concur with the "Explanation of Vote" offered by Senator Sykes on **Sub SB 444**.

Mr. President: I voted against both **SB 242** and the **APEX** bill as I worried that we were picking winners and losers with numerous massive tax credits that are not available to the everyday taxpayer of Kansas. These two big troublesome bills gave me

serious pause and I felt they were not the right path ahead for the state. Those two bills gave me the only real doubt I had about voting for this bill and the budget. But, the fact that we are retiring nearly \$1 Billion dollars in debt through the pay-off of the KPERs debt, is the responsible thing to do, and will pay dividends for Kansans in the future. It is my hope that now we have retired this debt that in future years our spending will either be flat or drop so that we can start providing necessary tax relief for all Kansans. For these reasons, I vote "aye."—MIKE THOMPSON

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2541, HB 2582, HB 2674, HB 2676.**
Announcing adoption of **HCR 5032.**

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2541, HB 2582, HB 2674, HB 2676; HCR 5032 were thereupon introduced and read by title.

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

The Senate met pursuant to recess with President Masterson in the chair.

COMMITTEE OF THE WHOLE

On motion of Senator Alley, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator Claeys in the chair.

On motion of Senator Claeys the following report was adopted:

SB 390, HB 2478 be amended by the adoption of the committee amendments, and the bills be passed as amended.

Senator Francisco moved **SB 390** be rereferred to the Committee on Federal and State Affairs. The motion failed.

The committee report on **SB 563** recommending **Sub SB 563** be adopted, and the substitute bill be passed.

Motions by Senators Holland, Sykes and Pyle to amend **Sub SB 563** failed.

HB 2559 be passed over and retain a place on the calendar.

CHANGE OF REFERENCE

The President withdrew **HB 2597** from the Committee on **Transportation**, and referred the bill to the Committee on **Assessment and Taxation**.

The President withdrew **S Sub HB 2239** from the Calendar under the heading of **General Orders**, and rereferred the bill to the Committee on **Assessment and Taxation**.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture and Natural Resources** recommends **HB 2563**, as amended by House Committee, be amended on page 13, in line 24, by striking "\$3,000" and inserting "\$1,000"; in line 27, after the stricken material by inserting "Such civil penalty may be assessed in addition to any other penalty provided by law.";

On page 18, in line 33, by striking "\$5,000" and inserting "\$10,000"; and the bill be passed as amended.

Also, **HB 2605**, as amended by House Committee, be amended on page 1, in line 35, by striking all before the period and inserting "met the requirements of this section";

On page 3, in line 9, by striking "or food animal percentage"; also in line 9, by striking all after "requirement"; in line 10, by striking all before "after"; and the bill be passed as amended.

Committee on **Commerce** recommends **HB 2703** be amended on page 34, by striking all in line 12; in line 13, by striking all before the period and inserting "in the shared work program, trade adjustment assistance and trade readjustment assistance program, claimants on temporary layoff with a return-to-work date, claimants that are currently employed or that no longer reside in Kansas, claimants that are current reemployment services and eligibility assessment participants, claimants that are members of a placement union or claimants that are engaged in a training program"; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **HB 2110**, **HB 2490**, **HB 2547**, **HB 2568** be passed.

Also, **HB 2510** be amended on page 4, in line 6, by striking "statute book" and inserting "Kansas Register"; and the bill be passed as amended.

HB 2564 be amended on page 2, following line 28, by inserting:

"Sec. 2. K.S.A. 40-221a is hereby amended to read as follows: 40-221a. (a) 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 paragraph (1), (2), (3), (4), (5), (6) or (7). Credit shall be allowed under paragraph (1), (2) or (3) 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 paragraph (3) or (4) if the applicable requirements of paragraph ~~(7)~~ (8) 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, that 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-U.S. 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-U.S. 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 trusteed 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 trusteed 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) (A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below.

(i) The assuming insurer must have its head office or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction. A "reciprocal jurisdiction" is a jurisdiction that meets one of the following:

(a) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European

Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to Dodd-Frank wall street reform and consumer protection act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(b) a United States jurisdiction that meets the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program; or

(c) a qualified jurisdiction, as determined by the commissioner pursuant to subsection (a)(5)(C), that is not otherwise described in subsection (a)(6)(A)(i)(a) or (b) and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner.

(ii) The assuming insurer shall have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth by the commissioner. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth by the commissioner.

(iii) The assuming insurer shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, to be set forth by the commissioner. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(iv) The assuming insurer shall agree and provide adequate assurance to the commissioner, in a form specified by the commissioner, as follows:

(a) The assuming insurer shall provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subsection (a)(6)(A)(ii) or (iii), or if any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law;

(b) the assuming insurer shall consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as the assuming insurer's agent for service of process. The commissioner may require that consent for service of process be provided to the commissioner and included in each reinsurance agreement. Nothing in this provision shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

(c) the assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(d) each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming

insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

(e) the assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement that involves this state's ceding insurers, agree to notify the ceding insurer and the commissioner and to provide security in an amount equal to 100% of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of subsections (a)(5) and (b) and as specified by the commissioner.

(v) The assuming insurer or its legal successor shall provide, if requested by the commissioner, on behalf of itself and any legal predecessors, certain documentation to the commissioner, as specified by the commissioner.

(vi) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements.

(vii) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in subsection (a)(6)(A)(ii) or (iii).

(viii) Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(B) The commissioner shall timely create and publish a list of reciprocal jurisdictions.

(i) A list of reciprocal jurisdictions is published through the national association of insurance commissioners committee process. The commissioner's list shall include any reciprocal jurisdiction, as defined under subsections (a)(6)(A)(i)(a) and (b), and shall consider any other reciprocal jurisdiction included on the national association of insurance commissioners list. The commissioner may approve a jurisdiction that does not appear on the national association of insurance commissioners list of reciprocal jurisdictions in accordance with criteria to be developed by the commissioner.

(ii) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth by the commissioner, except that the commissioner shall not remove from the list a reciprocal jurisdiction, as defined under subsections (a)(6)(A)(i)(a) and (b). Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to this section.

(C) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The commissioner may add an assuming insurer to such list if a national association of insurance commissioners accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under subsection (a)(6)(A)(iv) and complies with any additional requirements that the commissioner may impose, except to the extent that

they conflict with an applicable covered agreement.

(D) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

(i) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with subsection (b).

(ii) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of subsection (b).

(E) If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(F) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section or other applicable law or regulation.

(G) Credit may be taken under this subsection only for reinsurance agreements entered into, amended or renewed on or after July 1, 2021, and only with respect to losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met all eligibility requirements pursuant to subsection (a)(6)(A), or the effective date of the new reinsurance agreement, amendment or renewal.

(H) This paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subsection, as long as the reinsurance qualifies for credit under any other applicable provision of this section.

(I) Nothing in this subsection shall:

(i) Authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement; or

(ii) limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(7) 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)(6), but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(8) 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.

(9) If the assuming insurer does not meet the requirements of subsection (a)(1), (a)(2), (a)(3) or (a)(6), 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.

(10) 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.

(11) 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).

(12) (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

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.;

Also on page 2, in line 29, after "K.S.A." by inserting "40-221a and"; also in line 29, by striking "is" and inserting "are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, after "to" by inserting "the regulation thereof; pertaining to credit for reinsurance;"; in line 2, after "updating" by inserting "requirements for when credit for reinsurance may be granted to an assuming insurer that is not licensed, accredited or certified to transact insurance or reinsurance in this state; updating"; also in line 2, after "K.S.A." by inserting "40-221a and"; in line 3, by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Judiciary** recommends **HB 2608** be passed.

Also, **HB 2516** be amended on page 1, by striking all in lines 11 through 36;

By striking all on page 2;

On page 3, by striking all in lines 1 through 14; in line 21, by striking all after the stricken material; by striking all in line 22; in line 23, by striking "thereto," and inserting "summary of the offender's criminal history prepared for the court by the state";

On page 5, in line 21, by striking "21-6813,";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, by striking "the"; by striking all in line 3; in line 4, by striking all before "an"; in line 7, by striking "21-6813,"; and the bill be passed as amended.

HB 2537, HB 2574, HB 2607 be passed and, because the committee is of the opinion that the bills are of a noncontroversial nature, be placed on the consent calendar.

Committee on **Public Health and Welfare** recommends **SB 155** be passed.

Also, **SB 489** be amended on page 3, in line 21, by striking "issue an order requiring" and inserting "recommend"; in line 28, by striking "order" and inserting "recommend"; in line 35, by striking "require" and inserting "recommend"; in line 41, by striking "require" and inserting "recommend"; and the bill be passed as amended.

REPORT ON ENROLLED BILLS

SR 1732 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 16, 2022.

On motion of Senator Alley, the Senate adjourned until 2:30 p.m., Thursday, March 17, 2022.

CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks*.

COREY CARNAHAN, *Secretary of the Senate*.

