

HOUSE BILL No. 2134

By Committee on Insurance and Pensions

1-26

1 AN ACT concerning insurance; relating to the reinsurance of risk;
2 updating the national association of insurance commissioners credit for
3 reinsurance model law; insurance holding company act; codifying the
4 national association of insurance commissioners credit for insurance
5 model regulation; amending K.S.A. 2020 Supp. 40-221a, 40-3302, 40-
6 3304 and 40-3306 and repealing the existing sections.

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

9 New Section 1. (a) *Purpose.* The actions and information required by
10 this section are declared to be necessary and appropriate in the public
11 interest and for the protection of the ceding insurers in this state.

12 (b) *Severability.* If any provision of this section, or the application of
13 the provision to any person or circumstance, is held invalid, the remainder
14 of the act, and the application of the provision to persons or circumstances
15 other than those to which it is held invalid, shall not be affected.

16 (c) *Credit for reinsurance – reinsurer licensed in this state.* Pursuant
17 to K.S.A. 40-221a(a), and amendments thereto, the commissioner shall
18 allow credit for reinsurance ceded by a domestic insurer to an assuming
19 insurer that was licensed in this state as of any date on which statutory
20 financial statement credit for reinsurance is claimed.

21 (d) *Credit for reinsurance – accredited reinsurers.* (1) Pursuant to
22 K.S.A. 40-221a(a)(2), and amendments thereto, the commissioner shall
23 allow credit for reinsurance ceded by a domestic insurer to an assuming
24 insurer that is accredited as a reinsurer in this state as of the date on which
25 statutory financial statement credit for reinsurance is claimed. An
26 accredited reinsurer shall:

27 (A) File a properly executed form ar-1 in accordance with the
28 instructions and as prescribed and adopted by the national association of
29 insurance commissioners and the commissioner of insurance as evidence
30 of its submission to this state's jurisdiction and to this state's authority to
31 examine its books and records;

32 (B) file with the commissioner a certified copy of a certificate of
33 authority or other acceptable evidence that it is licensed to transact
34 insurance or reinsurance in at least one state, or, in the case of a United
35 States branch of an alien assuming insurer, is entered through and licensed
36 to transact insurance or reinsurance in at least one state;

1 (C) file annually with the commissioner a copy of its annual
2 statement filed with the insurance department of its state of domicile or, in
3 the case of an alien assuming insurer, with the state through which it is
4 entered and in which it is licensed to transact insurance or reinsurance, and
5 a copy of its most recent audited financial statement; and

6 (D) maintain a surplus as regards policyholders in an amount not less
7 than \$20,000,000, or obtain the affirmative approval of the commissioner
8 upon a finding that it has adequate financial capacity to meet its
9 reinsurance obligations and is otherwise qualified to assume reinsurance
10 from domestic insurers.

11 (2) If the commissioner determines that the assuming insurer has
12 failed to meet or maintain any of these qualifications, the commissioner
13 may, upon written notice and opportunity for hearing, suspend or revoke
14 the accreditation. Credit shall not be allowed a domestic ceding insurer
15 under this section if the assuming insurer's accreditation has been revoked
16 by the commissioner, or if the reinsurance was ceded while the assuming
17 insurer's accreditation was under suspension by the commissioner.

18 (e) *Credit for reinsurance – reinsurer domiciled in another state.* (1)
19 Pursuant to K.S.A. 40-221a(a)(3), and amendments thereto, the
20 commissioner shall allow credit for reinsurance ceded by a domestic
21 insurer to an assuming insurer that, as of any date on which statutory
22 financial statement credit for reinsurance is claimed:

23 (A) Is domiciled in or, in the case of a United States branch of an
24 alien assuming insurer, is entered through, a state that employs standards
25 regarding credit for reinsurance substantially similar to those applicable
26 under K.S.A. 40-221a, and amendments thereto, and this section;

27 (B) maintains a surplus as regards policyholders in an amount not less
28 than \$20,000,000; and

29 (C) files a properly executed form ar-1, in accordance with the
30 instructions and as prescribed and adopted by the national association of
31 insurance commissioners and the commissioner of insurance, with the
32 commissioner as evidence of its submission to this state's authority to
33 examine its books and records.

34 (2) The provisions of this section relating to surplus as regards
35 policyholders shall not apply to reinsurance ceded and assumed pursuant
36 to pooling arrangements among insurers in the same holding company
37 system. As used in this section, "substantially similar" standards means
38 credit for reinsurance standards that the commissioner determines are
39 equal to or exceed the standards of K.S.A. 40-221a, and amendments
40 thereto, and this section.

41 (f) *Credit for reinsurance – reinsurers maintaining trust funds.* (1)
42 Pursuant to K.S.A. 40-221a(a)(4), and amendments thereto, the
43 commissioner shall allow credit for reinsurance ceded by a domestic

1 insurer to an assuming insurer that, as of any date on which statutory
2 financial statement credit for reinsurance is claimed, and thereafter for so
3 long as credit for reinsurance is claimed, maintains a trust fund in an
4 amount prescribed below in a qualified United States financial institution,
5 as defined in K.S.A. 40-221a(c)(2), and amendments thereto, for the
6 payment of the valid claims of its United States-domiciled ceding insurers,
7 their assigns and successors in interest. The assuming insurer shall report
8 annually to the commissioner substantially the same information as that
9 required to be reported on the national association of insurance
10 commissioners annual statement form by licensed insurers, to enable the
11 commissioner to determine the sufficiency of the trust fund.

12 (2) The following requirements apply to the following categories of
13 assuming insurer:

14 (A) The trust fund for a single assuming insurer shall consist of funds
15 in trust in an amount not less than the assuming insurer's liabilities
16 attributable to reinsurance ceded by United States-domiciled insurers and,
17 in addition, the assuming insurer shall maintain a trustee surplus of not
18 less than \$20,000,000, except as provided in subparagraph (B).

19 (B) At any time after the assuming insurer has permanently
20 discontinued underwriting new business secured by the trust for at least
21 three full years, the commissioner with principal regulatory oversight of
22 the trust may authorize a reduction in the required trustee surplus, but
23 only after a finding, based on an assessment of the risk, that the new
24 required surplus level is adequate for the protection of United States
25 ceding insurers, policyholders and claimants in light of reasonably
26 foreseeable adverse loss development. The risk assessment may involve an
27 actuarial review, including an independent analysis of reserves and cash
28 flows, and shall consider all material risk factors, including, when
29 applicable, the lines of business involved, the stability of the incurred loss
30 estimates and the effect of the surplus requirements on the assuming
31 insurer's liquidity or solvency. The minimum required trustee surplus may
32 not be reduced to an amount less than 30% of the assuming insurer's
33 liabilities attributable to reinsurance ceded by United States ceding
34 insurers covered by the trust.

35 (C) (i) The trust fund for a group including incorporated and
36 individual unincorporated underwriters shall consist of:

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

42 (b) for reinsurance ceded under reinsurance agreements with an
43 inception date on or before December 31, 1992, and not amended or

1 renewed after that date, notwithstanding the other provisions of this
2 section, funds in trust in an amount not less than the respective
3 underwriters' several insurance and reinsurance liabilities attributable to
4 business written in the United States; and

5 (c) in addition to these trusts, the group shall maintain a trustee
6 surplus of which \$100,000,000 shall be held jointly for the benefit of the
7 United States-domiciled ceding insurers of any member of the group for
8 all the years of account.

9 (ii) The incorporated members of the group shall not be engaged in
10 any business other than underwriting as a member of the group and shall
11 be subject to the same level of regulation and solvency control by the
12 group's domiciliary regulator as are the unincorporated members. The
13 group shall, within 90 days after its financial statements are due to be filed
14 with the group's domiciliary regulator, provide to the commissioner:

15 (a) An annual certification by the group's domiciliary regulator of the
16 solvency of each underwriter member of the group; or

17 (b) if a certification is unavailable, a financial statement, prepared by
18 independent public accountants, of each underwriter member of the group.

19 (D) (i) The trust fund for a group of incorporated insurers under
20 common administration, whose members possess aggregate policyholders
21 surplus of \$10,000,000,000 as calculated and reported in substantially the
22 same manner as prescribed by the annual statement instructions and
23 accounting practices and procedures manual of the national association of
24 insurance commissioners and that has continuously transacted an
25 insurance business outside the United States for at least three years
26 immediately prior to making application for accreditation, shall:

27 (a) Consist of funds in trust in an amount not less than the assuming
28 insurers' several liabilities attributable to business ceded by United States-
29 domiciled ceding insurers to any members of the group pursuant to
30 reinsurance contracts issued in the name of such group;

31 (b) maintain a joint trustee surplus of which \$100,000,000 shall be
32 held jointly for the benefit of United States-domiciled ceding insurers of
33 any member of the group; and

34 (c) file a properly executed form ar-1, in accordance with the
35 instructions and as prescribed and adopted by the national association of
36 insurance commissioners and the commissioner of insurance, as evidence
37 of the submission to this state's authority to examine the books and records
38 of any of its members and shall certify that any member examined will
39 bear the expense of any such examination.

40 (ii) Within 90 days after the statements are due to be filed with the
41 group's domiciliary regulator, the group shall file with the commissioner
42 an annual certification of each underwriter member's solvency by the
43 member's domiciliary regulators and financial statements, prepared by

1 independent public accountants, of each underwriter member of the group.

2 (3) (A) Credit for reinsurance shall not be granted unless the form of
3 the trust and any amendments to the trust have been approved by either the
4 commissioner of the state where the trust is domiciled or the commissioner
5 of another state who, pursuant to the terms of the trust instrument, has
6 accepted responsibility for regulatory oversight of the trust. The form of
7 the trust and any trust amendments also shall be filed with the
8 commissioner of every state in which the ceding insurer beneficiaries of
9 the trust are domiciled. The trust instrument shall provide that:

10 (i) Contested claims shall be valid and enforceable out of funds in
11 trust to the extent remaining unsatisfied 30 days after entry of the final
12 order of any court of competent jurisdiction in the United States;

13 (ii) legal title to the assets of the trust shall be vested in the trustee for
14 the benefit of the grantor's United States ceding insurers, their assigns and
15 successors in interest;

16 (iii) the trust shall be subject to examination as determined by the
17 commissioner;

18 (iv) the trust shall remain in effect for as long as the assuming insurer,
19 or any member or former member of a group of insurers, shall have
20 outstanding obligations under reinsurance agreements subject to the trust;
21 and

22 (v) not later than February 28 of each year, the trustee of the trust
23 shall report to the commissioner in writing setting forth the balance in the
24 trust and listing the trust's investments at the preceding year-end, and shall
25 certify the date of termination of the trust, if so planned, or certify that the
26 trust shall not expire prior to the following December 31.

27 (B) (i) Notwithstanding any other provisions in the trust instrument, if
28 the trust fund is inadequate because it contains an amount less than the
29 amount required by this subsection or if the grantor of the trust has been
30 declared insolvent or placed into receivership, rehabilitation, liquidation or
31 similar proceedings under the laws of its state or country of domicile, the
32 trustee shall comply with an order of the commissioner with regulatory
33 oversight over the trust or with an order of a court of competent
34 jurisdiction directing the trustee to transfer to the commissioner with
35 regulatory oversight over the trust or other designated receiver all of the
36 assets of the trust fund.

37 (ii) The assets shall be distributed by and claims shall be filed with
38 and valued by the commissioner with regulatory oversight over the trust in
39 accordance with the laws of the state in which the trust is domiciled
40 applicable to the liquidation of domestic insurance companies.

41 (iii) If the commissioner with regulatory oversight over the trust
42 determines that the assets of the trust fund or any part thereof are not
43 necessary to satisfy the claims of the United States beneficiaries of the

1 trust, the commissioner with regulatory oversight over the trust shall return
2 the assets, or any part thereof, to the trustee for distribution in accordance
3 with the trust agreement.

4 (iv) The grantor shall waive any right otherwise available to it under
5 United States law that is inconsistent with this provision.

6 (4) For purposes of this section, the term "liabilities" means the
7 assuming insurer's gross liabilities attributable to reinsurance ceded by
8 United States-domiciled insurers, excluding liabilities that are otherwise
9 secured by acceptable means, and includes:

10 (A) For business ceded by domestic insurers authorized to write
11 accident and health and property and casualty insurance:

12 (i) Losses and allocated loss expenses paid by the ceding insurer,
13 recoverable from the assuming insurer;

14 (ii) reserves for losses reported and outstanding;

15 (iii) reserves for losses incurred but not reported;

16 (iv) reserves for allocated loss expenses; and

17 (v) unearned premiums.

18 (B) For business ceded by domestic insurers authorized to write life,
19 health and annuity insurance:

20 (i) Aggregate reserves for life policies and contracts net of policy
21 loans and net due and deferred premiums;

22 (ii) aggregate reserves for accident and health policies;

23 (iii) deposit funds and other liabilities without life or disability
24 contingencies; and

25 (iv) liabilities for policy and contract claims.

26 (5) Assets deposited in trusts established pursuant to K.S.A. 40-
27 221a(a), and amendments thereto, and this subsection shall be valued
28 according to their current fair market value and shall consist only of cash
29 in United States dollars, certificates of deposit issued by a United States
30 financial institution, as defined in K.S.A. 40-221a(c), and amendments
31 thereto, clean, irrevocable, unconditional and "evergreen" letters of credit
32 issued or confirmed by a qualified United States financial institution, as
33 defined in K.S.A. 40-221a(c), and amendments thereto, and investments of
34 the type specified in this subsection, but investments in or issued by an
35 entity controlling, controlled by or under common control with either the
36 grantor or beneficiary of the trust shall not exceed 5% of total investments.
37 Not more than 20% of the total of the investments in the trust may be
38 foreign investments authorized under subparagraph (A)(v), (C), (F)(ii) or
39 (G), and not more than 10% of the total of the investments in the trust may
40 be securities denominated in foreign currencies. For purposes of applying
41 the preceding sentence, a depository receipt denominated in United States
42 dollars and representing rights conferred by a foreign security shall be
43 classified as a foreign investment denominated in a foreign currency. The

1 assets of a trust established to satisfy the requirements of K.S.A. 40-
2 221a(a), and amendments thereto, shall be invested only as follows:

3 (A) Government obligations that are not in default as to principal or
4 interest, that are valid and legally authorized and that are issued, assumed
5 or guaranteed by:

6 (i) The United States or by any agency or instrumentality of the
7 United States;

8 (ii) a state of the United States;

9 (iii) a territory, possession or other governmental unit of the United
10 States;

11 (iv) an agency or instrumentality of a governmental unit referred to in
12 clauses (ii) and (iii) if the obligations shall be by law, statutory or
13 otherwise, payable, as to both principal and interest, from taxes levied or
14 by law required to be levied or from adequate special revenues pledged or
15 otherwise appropriated or by law required to be provided for making these
16 payments, but shall not be obligations eligible for investment under this
17 paragraph if payable solely out of special assessments on properties
18 benefited by local improvements; or

19 (v) the government of any other country that is a member of the
20 organization for economic cooperation and development and whose
21 government obligations are rated "A" or higher, or the equivalent, by a
22 rating agency recognized by the securities valuation office of the national
23 association of insurance commissioners.

24 (B) Obligations that are issued in the United States, or that are dollar
25 denominated and issued in a non-U.S. market, by a solvent United States
26 institution, other than an insurance company, or that are assumed or
27 guaranteed by a solvent United States institution, other than an insurance
28 company and that are not in default as to principal or interest if the
29 obligations:

30 (i) Are rated "A" or higher, or the equivalent, by a securities rating
31 agency recognized by the securities valuation office of the national
32 association of insurance commissioners, or if not so rated, are similar in
33 structure and other material respects to other obligations of the same
34 institution that are so rated;

35 (ii) are insured by at least one authorized insurer, other than the
36 investing insurer or a parent, subsidiary or affiliate of the investing insurer,
37 licensed to insure obligations in this state and, after considering the
38 insurance, are rated "AAA," or the equivalent, by a securities rating
39 agency recognized by the securities valuation office of the national
40 association of insurance commissioners; or

41 (iii) have been designated as class one or class two by the securities
42 valuation office of the national association of insurance commissioners.

43 (C) Obligations issued, assumed or guaranteed by a solvent non-U.S.

1 institution chartered in a country that is a member of the organization for
2 economic cooperation and development or obligations of United States
3 corporations issued in a non-U.S. currency, provided that in either case the
4 obligations are rated "A" or higher, or the equivalent, by a rating agency
5 recognized by the securities valuation office of the national association of
6 insurance commissioners.

7 (D) An investment made pursuant to the provisions of subparagraph
8 (A), (B) or (C) shall be subject to the following additional limitations:

9 (i) An investment in or loan upon the obligations of an institution
10 other than an institution that issues mortgage-related securities shall not
11 exceed 5% of the assets of the trust;

12 (ii) an investment in any one mortgage-related security shall not
13 exceed 5% of the assets of the trust;

14 (iii) the aggregate total investment in mortgage-related securities shall
15 not exceed 25% of the assets of the trust; and

16 (iv) preferred or guaranteed shares issued or guaranteed by a solvent
17 United States institution are permissible investments if all of the
18 institution's obligations are eligible as investments under subparagraphs
19 (B)(i) and (B)(iii), but shall not exceed 2% of the assets of the trust.

20 (E) As used in this section:

21 (i) "Mortgage-related security" means an obligation that is rated
22 "AA" or higher, or the equivalent, by a securities rating agency recognized
23 by the securities valuation office of the national association of insurance
24 commissioners and that either:

25 (a) Represents ownership of one or more promissory notes or
26 certificates of interest or participation in the notes, including any rights
27 designed to assure servicing of, or the receipt or timeliness of receipt by
28 the holders of the notes, certificates, or participation of amounts payable
29 under, the notes, certificates or participation, that:

30 (1) Are directly secured by a first lien on a single parcel of real estate,
31 including stock allocated to a dwelling unit in a residential cooperative
32 housing corporation, upon which is located a dwelling or mixed residential
33 and commercial structure, or on a residential manufactured home, as
34 defined in 42 U.S.C. § 5402(6), whether the manufactured home is
35 considered real or personal property under the laws of the state in which it
36 is located; and

37 (2) were originated by a savings and loan association, savings bank,
38 commercial bank, credit union, insurance company, or similar institution
39 that is supervised and examined by a federal or state housing authority, or
40 by a mortgagee approved by the United States secretary of housing and
41 urban development pursuant to 12 U.S.C. §§ 1709 and 1715b, or, where
42 the notes involve a lien on the manufactured home, by an institution or by
43 a financial institution approved for insurance by the United States

1 secretary of housing and urban development pursuant to 12 U.S.C. § 1703;
2 or

3 (b) is secured by one or more promissory notes or certificates of
4 deposit or participations in the notes, with or without recourse to the
5 insurer of the notes, and, by its terms, provides for payments of principal
6 in relation to payments, or reasonable projections of payments, or notes
7 meeting the requirements of subclauses (a)(1) and (a)(2);

8 (ii) "promissory note," when used in connection with a manufactured
9 home, shall also include a loan, advance or credit sale as evidenced by a
10 retail installment sales contract or other instrument.

11 (F) *Equity interests.* (i) Investments in common shares or partnership
12 interests of a solvent United States institution are permissible if:

13 (a) Its obligations and preferred shares, if any, are eligible as
14 investments under this subsection; and

15 (b) the equity interests of the institution, except an insurance
16 company, are registered on a national securities exchange as provided in
17 the federal securities exchange act of 1934, 15 U.S.C. §§ 78a to 78kk, or
18 otherwise registered pursuant to that act, and if otherwise registered, price
19 quotations for them are furnished through a nationwide automated
20 quotations system approved by the financial industry regulatory authority,
21 or its successor organization. A trust shall not invest in equity interests
22 under this subparagraph an amount exceeding 1% of the assets of the trust
23 even though the equity interests are not so registered and are not issued by
24 an insurance company;

25 (ii) investments in common shares of a solvent institution organized
26 under the laws of a country that is a member of the organization for
27 economic cooperation and development, if:

28 (a) All its obligations are rated "A" or higher, or the equivalent, by a
29 rating agency recognized by the securities valuation office of the national
30 association of insurance commissioners; and

31 (b) the equity interests of the institution are registered on a securities
32 exchange regulated by the government of a country that is a member of the
33 organization for economic cooperation and development;

34 (iii) an investment in or loan upon any one institution's outstanding
35 equity interests shall not exceed 1% of the assets of the trust. The cost of
36 an investment in equity interests made pursuant to this subparagraph, when
37 added to the aggregate cost of other investments in equity interests held
38 pursuant to this paragraph, shall not exceed 10% of the assets in the trust.

39 (G) Obligations issued, assumed or guaranteed by a multinational
40 development bank, provided the obligations are rated "A," or higher, or the
41 equivalent, by a rating agency recognized by the securities valuation office
42 of the national association of insurance commissioners.

43 (H) *Investment companies.* (i) Securities of an investment company

1 registered pursuant to the investment company act of 1940, 15 U.S.C. §
2 80a, are permissible investments if the investment company:

3 (a) Invests at least 90% of its assets in the types of securities that
4 qualify as an investment under subparagraph (A), (B) or (C) or invests in
5 securities that are determined by the commissioner to be substantively
6 similar to the types of securities set forth in subparagraph (A), (B) or (C);
7 or

8 (b) invests at least 90% of its assets in the types of equity interests
9 that qualify as an investment under subparagraph (F)(i);

10 (ii) investments made by a trust in investment companies under this
11 paragraph shall not exceed the following limitations:

12 (a) An investment in an investment company qualifying under clause
13 (i)(a) shall not exceed 10% of the assets in the trust and the aggregate
14 amount of investment in qualifying investment companies shall not exceed
15 25% of the assets in the trust; and

16 (b) investments in an investment company qualifying under clause (i)
17 (b) shall not exceed 5% of the assets in the trust and the aggregate amount
18 of investment in qualifying investment companies shall be included when
19 calculating the permissible aggregate value of equity interests pursuant to
20 subparagraph (F)(i).

21 (I) *Letters of credit.* (i) In order for a letter of credit to qualify as an
22 asset of the trust, the trustee shall have the right and the obligation
23 pursuant to the deed of trust or some other binding agreement, as duly
24 approved by the commissioner, to immediately draw down the full amount
25 of the letter of credit and hold the proceeds in trust for the beneficiaries of
26 the trust if the letter of credit will otherwise expire without being renewed
27 or replaced; and

28 (ii) the trust agreement shall provide that the trustee shall be liable for
29 its negligence, willful misconduct or lack of good faith. The failure of the
30 trustee to draw against the letter of credit in circumstances where such
31 draw would be required shall be deemed to be negligence or willful
32 misconduct.

33 (6) A specific security provided to a ceding insurer by an assuming
34 insurer pursuant to subsection (k) shall be applied, until exhausted, to the
35 payment of liabilities of the assuming insurer to the ceding insurer holding
36 the specific security prior to, and as a condition precedent for, presentation
37 of a claim by the ceding insurer for payment by a trustee of a trust
38 established by the assuming insurer pursuant to this section.

39 (g) *Credit for reinsurance – certified reinsurers.* (1) Pursuant to
40 K.S.A. 40-221a(a)(5), and amendments thereto, the commissioner shall
41 allow credit for reinsurance ceded by a domestic insurer to an assuming
42 insurer that has been certified as a reinsurer in this state at all times for
43 which statutory financial statement credit for reinsurance is claimed under

1 this section. The credit allowed shall be based upon the security held by or
 2 on behalf of the ceding insurer in accordance with a rating assigned to the
 3 certified reinsurer by the commissioner. The security shall be in a form
 4 consistent with the provisions of K.S.A. 40-221a(a)(5) and 40-221a(b),
 5 and amendments thereto, and subsection (k), (l) or (m). The amount of
 6 security required in order for full credit to be allowed shall correspond
 7 with the following requirements:

8 (A) Ratings	Security Required
9 Secure - 1	0%
10 Secure - 2	10%
11 Secure - 3	20%
12 Secure - 4	50%
13 Secure - 5	75%
14 Secure - 6	100%

15 (B) Affiliated reinsurance transactions shall receive the same
 16 opportunity for reduced security requirements as all other reinsurance
 17 transactions.

18 (C) The commissioner shall require the certified reinsurer to post for
 19 the benefit of the ceding insurer or its estate, 100% security upon the entry
 20 of an order of rehabilitation, liquidation or conservation against the ceding
 21 insurer.

22 (D) In order to facilitate the prompt payment of claims, a certified
 23 reinsurer shall not be required to post security for catastrophe recoverables
 24 for a period of one year from the date of the first instance of a liability
 25 reserve entry by the ceding company as a result of a loss from a
 26 catastrophic occurrence as recognized by the commissioner. The one-year
 27 deferral period shall be contingent upon the certified reinsurer continuing
 28 to pay claims in a timely manner. Reinsurance recoverables for only the
 29 following lines of business as reported on the national association of
 30 insurance commissioners annual financial statement related specifically to
 31 the catastrophic occurrence shall be included in the deferral:

- 32 (i) Line 1: Fire.
- 33 (ii) Line 2: Allied lines.
- 34 (iii) Line 3: Farmowners multiple peril.
- 35 (iv) Line 4: Homeowners multiple peril.
- 36 (v) Line 5: Commercial multiple peril.
- 37 (vi) Line 9: Inland marine.
- 38 (vii) Line 12: Earthquake.
- 39 (viii) Line 21: Auto physical damage.

40 (E) Credit for reinsurance under this section shall apply only to
 41 reinsurance contracts entered into or renewed on or after the effective date
 42 of the certification of the assuming insurer. Any reinsurance contract
 43 entered into prior to the effective date of the certification of the assuming

1 insurer that is subsequently amended after the effective date of the
2 certification of the assuming insurer, or a new reinsurance contract,
3 covering any risk for which collateral was provided previously, shall only
4 be subject to this section with respect to losses incurred and reserves
5 reported from and after the effective date of the amendment or new
6 contract.

7 (F) Nothing in this section shall prohibit the parties to a reinsurance
8 agreement from agreeing to provisions establishing security requirements
9 that exceed the minimum security requirements established for certified
10 reinsurers under this section.

11 (2) *Certification procedure.* (A) The commissioner shall post notice
12 on the insurance department's website promptly upon receipt of any
13 application for certification, including instructions on how members of the
14 public may respond to the application. The commissioner shall not take
15 final action on the application until at least 30 days after posting the notice
16 required by this paragraph.

17 (B) The commissioner shall issue written notice to an assuming
18 insurer that has made application and been approved as a certified
19 reinsurer. Included in such notice shall be the rating assigned the certified
20 reinsurer in accordance with subsection (g)(2)(A). The commissioner shall
21 publish a list of all certified reinsurers and their ratings.

22 (C) In order to be eligible for certification, the assuming insurer shall
23 meet the following requirements:

24 (i) The assuming insurer must be domiciled and licensed to transact
25 insurance or reinsurance in a qualified jurisdiction, as determined by the
26 commissioner pursuant to subsection (g)(3);

27 (ii) the assuming insurer shall maintain capital and surplus, or its
28 equivalent, of no less than \$250,000,000 calculated in accordance with
29 subsection (g)(2)(D)(viii). This requirement may also be satisfied by an
30 association including incorporated and individual unincorporated
31 underwriters having minimum capital and surplus equivalents, net of
32 liabilities, of at least \$250,000,000 and a central fund containing a balance
33 of at least \$250,000,000;

34 (iii) the assuming insurer shall maintain financial strength ratings
35 from two or more rating agencies deemed acceptable by the commissioner.
36 These ratings shall be based on interactive communication between the
37 rating agency and the assuming insurer and shall not be based solely on
38 publicly available information. These financial strength ratings shall be
39 one factor used by the commissioner in determining the rating that is
40 assigned to the assuming insurer. Acceptable rating agencies include the
41 following:

42 (a) Standard & poor's;

43 (b) Moody's investors service;

- 1 (c) Fitch ratings;
- 2 (d) a.m. best company; or
- 3 (e) any other nationally recognized statistical rating organization; and
- 4 (iv) the certified reinsurer shall comply with any other requirements
- 5 reasonably imposed by the commissioner.

6 (D) Each certified reinsurer shall be rated on a legal entity basis, with
 7 due consideration being given to the group rating where appropriate,
 8 except that an association including incorporated and individual
 9 unincorporated underwriters that has been approved to do business as a
 10 single certified reinsurer may be evaluated on the basis of its group rating.
 11 Factors that may be considered as part of the evaluation process include,
 12 but are not limited to, the following:

13 (i) The certified reinsurer's financial strength rating from an
 14 acceptable rating agency. The maximum rating that a certified reinsurer
 15 may be assigned shall correspond to its financial strength rating as outlined
 16 in the table below. The commissioner shall use the lowest financial
 17 strength rating received from an approved rating agency in establishing the
 18 maximum rating of a certified reinsurer. A failure to obtain or maintain at
 19 least two financial strength ratings from acceptable rating agencies shall
 20 result in loss of eligibility for certification;

21 (ii) the business practices of the certified reinsurer in dealing with its
 22 ceding insurers, including its record of compliance with reinsurance
 23 contractual terms and obligations;

24 Ratings	Best	S&P	Moody's	Fitch
25 Secure - 1	A++	AAA	Aaa	AAA
26 Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
27 Secure - 3	A	A+, A	A1, A2	A+, A
28 Secure - 4	A-	A-	A3	A-
29 Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB
30				BBB-
31 Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

35 (iii) for certified reinsurers domiciled in the United States, a review of
 36 the most recent applicable national association of insurance commissioners
 37 annual statement blank, either schedule f, for property and casualty
 38 reinsurers, or schedule s, for life and health reinsurers, in accordance with
 39 the instructions and as prescribed and adopted by the national association
 40 of insurance commissioners and the commissioner of insurance;

41 (iv) for certified reinsurers not domiciled in the United States, a
 42 review annually of form cr-f, for property and casualty reinsurers, in
 43 accordance with the instructions and as prescribed and adopted by the

1 national association of insurance commissioners and the commissioner of
2 insurance or form cr-s, for life and health reinsurers, in accordance with
3 the instructions and as prescribed and adopted by the national association
4 of insurance commissioners and the commissioner of insurance;

5 (v) the reputation of the certified reinsurer for prompt payment of
6 claims under reinsurance agreements, based on an analysis of ceding
7 insurers' schedule f reporting of overdue reinsurance recoverables,
8 including the proportion of obligations that are more than 90 days past due
9 or are in dispute, with specific attention given to obligations payable to
10 companies that are in administrative supervision or receivership;

11 (vi) regulatory actions against the certified reinsurer;

12 (vii) the report of the independent auditor on the financial statements
13 of the insurance enterprise, on the basis described in clause (viii);

14 (viii) for certified reinsurers not domiciled in the United States,
15 audited financial statements, regulatory filings, and actuarial opinion, as
16 filed with the non-U.S. jurisdiction supervisor, with a translation into
17 English. Upon the initial application for certification, the commissioner
18 will consider audited financial statements for the last two years filed with
19 its non-U.S. jurisdiction supervisor;

20 (ix) the liquidation priority of obligations to a ceding insurer in the
21 certified reinsurer's domiciliary jurisdiction in the context of an insolvency
22 proceeding;

23 (x) a certified reinsurer's participation in any solvent scheme of
24 arrangement, or similar procedure, that involves United States ceding
25 insurers. The commissioner shall receive prior notice from a certified
26 reinsurer that proposes participation by the certified reinsurer in a solvent
27 scheme of arrangement; and

28 (xi) any other information deemed relevant by the commissioner.

29 (E) Based on the analysis conducted under subparagraph (D)(v) of a
30 certified reinsurer's reputation for prompt payment of claims, the
31 commissioner may make appropriate adjustments in the security the
32 certified reinsurer is required to post to protect its liabilities to United
33 States ceding insurers, provided that the commissioner shall, at a
34 minimum, increase the security the certified reinsurer is required to post
35 by one rating level under subparagraph (D)(i) if the commissioner finds
36 that:

37 (i) More than 15% of the certified reinsurer's ceding insurance clients
38 have overdue reinsurance recoverables on paid losses of 90 days or more
39 that are not in dispute and that exceed \$100,000 for each cedent; or

40 (ii) the aggregate amount of reinsurance recoverables on paid losses
41 that are not in dispute that are overdue by 90 days or more exceeds
42 \$50,000,000.

43 (F) The assuming insurer shall submit a properly executed form cr-1

1 in accordance with the instructions and as prescribed and adopted by the
2 national association of insurance commissioners and the commissioner of
3 insurance as evidence of its submission to the jurisdiction of this state,
4 appointment of the commissioner as an agent for service of process in this
5 state, and agreement to provide security for 100% of the assuming
6 insurer's liabilities attributable to reinsurance ceded by United States
7 ceding insurers if it resists enforcement of a final United States judgment.
8 The commissioner shall not certify any assuming insurer that is domiciled
9 in a jurisdiction that the commissioner has determined does not adequately
10 and promptly enforce final United States judgments or arbitration awards.

11 (G) The certified reinsurer shall agree to meet applicable information
12 filing requirements as determined by the commissioner, both with respect
13 to an initial application for certification and on an ongoing basis. All
14 information submitted by certified reinsurers that is not otherwise public
15 information subject to disclosure shall be exempted from disclosure under
16 the open records act, K.S.A. 45-215, et seq., and amendments thereto, and
17 shall be withheld from public disclosure. The provisions of this
18 subparagraph providing for the confidentiality of public records shall
19 expire on July 1, 2026, unless the legislature reviews and continues such
20 provisions in accordance with K.S.A. 45-229, and amendments thereto.
21 The applicable information filing requirements are, as follows:

22 (i) Notification within 10 days of any regulatory actions taken against
23 the certified reinsurer, any change in the provisions of its domiciliary
24 license or any change in rating by an approved rating agency, including a
25 statement describing such changes and the reasons therefor;

26 (ii) annually, form cr-f or cr-s, in accordance with the instructions and
27 as prescribed and adopted by the national association of insurance
28 commissioners and the commissioner of insurance as applicable;

29 (iii) annually, the report of the independent auditor on the financial
30 statements of the insurance enterprise, on the basis described in clause
31 (iv);

32 (iv) annually, the most recent audited financial statements, regulatory
33 filings and actuarial opinion, as filed with the certified reinsurer's
34 supervisor, with a translation into English. Upon the initial certification,
35 audited financial statements for the last two years filed with the certified
36 reinsurer's supervisor;

37 (v) at least annually, an updated list of all disputed and overdue
38 reinsurance claims regarding reinsurance assumed from United States
39 domestic ceding insurers;

40 (vi) a certification from the certified reinsurer's domestic regulator
41 that the certified reinsurer is in good standing and maintains capital in
42 excess of the jurisdiction's highest regulatory action level; and

43 (vii) any other information that the commissioner may reasonably

1 require.

2 (H) *Change in rating or revocation of certification.* (i) In the case of a
3 downgrade by a rating agency or other disqualifying circumstance, the
4 commissioner upon written notice shall assign a new rating to the certified
5 reinsurer in accordance with the requirements of subsection (g)(2)(D)(i).

6 (ii) The commissioner shall have the authority to suspend, revoke or
7 otherwise modify a certified reinsurer's certification at any time if the
8 certified reinsurer fails to meet its obligations or security requirements
9 under this section, or if other financial or operating results of the certified
10 reinsurer, or documented significant delays in payment by the certified
11 reinsurer lead the commissioner to reconsider the certified reinsurer's
12 ability or willingness to meet its contractual obligations.

13 (iii) If the rating of a certified reinsurer is upgraded by the
14 commissioner, the certified reinsurer may meet the security requirements
15 applicable to its new rating on a prospective basis, but the commissioner
16 shall require the certified reinsurer to post security under the previously
17 applicable security requirements as to all contracts in force on or before
18 the effective date of the upgraded rating. If the rating of a certified
19 reinsurer is downgraded by the commissioner, the commissioner shall
20 require the certified reinsurer to meet the security requirements applicable
21 to its new rating for all business it has assumed as a certified reinsurer.

22 (iv) Upon revocation of the certification of a certified reinsurer by the
23 commissioner, the assuming insurer shall be required to post security in
24 accordance with subsection (k) in order for the ceding insurer to continue
25 to take credit for reinsurance ceded to the assuming insurer. If funds
26 continue to be held in trust in accordance with subsection (f), the
27 commissioner may allow additional credit equal to the ceding insurer's pro
28 rata share of such funds, discounted to reflect the risk of uncollectibility
29 and anticipated expenses of trust administration. Notwithstanding the
30 change of a certified reinsurer's rating or revocation of its certification, a
31 domestic insurer that has ceded reinsurance to that certified reinsurer may
32 not be denied credit for reinsurance for a period of three months for all
33 reinsurance ceded to that certified reinsurer, unless the reinsurance is
34 found by the commissioner to be at high risk of uncollectibility.

35 (3) *Qualified jurisdictions.* (A) If, upon conducting an evaluation
36 under this section with respect to the reinsurance supervisory system of
37 any non-U.S. assuming insurer, the commissioner determines that the
38 jurisdiction qualifies to be recognized as a qualified jurisdiction, the
39 commissioner shall publish notice and evidence of such recognition in an
40 appropriate manner. The commissioner may establish a procedure to
41 withdraw recognition of those jurisdictions that are no longer qualified.

42 (B) In order to determine whether the domiciliary jurisdiction of a
43 non-U.S. assuming insurer is eligible to be recognized as a qualified

1 jurisdiction, the commissioner shall evaluate the reinsurance supervisory
2 system of the non-U.S. jurisdiction, both initially and on an ongoing basis,
3 and consider the rights, benefits and the extent of reciprocal recognition
4 afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled
5 in the United States. The commissioner shall determine the appropriate
6 approach for evaluating the qualifications of such jurisdictions, and create
7 and publish a list of jurisdictions whose reinsurers may be approved by the
8 commissioner as eligible for certification. A qualified jurisdiction shall
9 agree to share information and cooperate with the commissioner with
10 respect to all certified reinsurers domiciled within that jurisdiction.
11 Additional factors to be considered in determining whether to recognize a
12 qualified jurisdiction, in the discretion of the commissioner, include, but
13 are not limited to, the following:

- 14 (i) The framework under which the assuming insurer is regulated;
- 15 (ii) the structure and authority of the domiciliary regulator with
16 regard to solvency regulation requirements and financial surveillance;
- 17 (iii) the substance of financial and operating standards for assuming
18 insurers in the domiciliary jurisdiction;
- 19 (iv) the form and substance of financial reports required to be filed or
20 made publicly available by reinsurers in the domiciliary jurisdiction and
21 the accounting principles used;
- 22 (v) the domiciliary regulator's willingness to cooperate with United
23 States regulators in general and the commissioner in particular;
- 24 (vi) the history of performance by assuming insurers in the
25 domiciliary jurisdiction;
- 26 (vii) any documented evidence of substantial problems with the
27 enforcement of final judgments in the domiciliary jurisdiction. A
28 jurisdiction shall not be considered to be a qualified jurisdiction if the
29 commissioner has determined that it does not adequately and promptly
30 enforce final United States judgments or arbitration awards;
- 31 (viii) any relevant international standards or guidance with respect to
32 mutual recognition of reinsurance supervision adopted by the international
33 association of insurance supervisors or successor organization; and
- 34 (ix) any other matters deemed relevant by the commissioner.

35 (C) A list of qualified jurisdictions shall be published through the
36 national association of insurance commissioners committee process. The
37 commissioner shall consider this list in determining qualified jurisdictions.
38 If the commissioner approves a jurisdiction as qualified that does not
39 appear on the list of qualified jurisdictions, the commissioner shall provide
40 thoroughly documented justification with respect to the criteria provided
41 under paragraphs (3)(B)(i) through (ix).

42 (D) United States jurisdictions that meet the requirements for
43 accreditation under the national association of insurance commissioners

1 financial standards and accreditation program shall be recognized as
2 qualified jurisdictions.

3 (4) *Recognition of certification issued by a national association of*
4 *insurance commissioners accredited jurisdiction.* (A) If an applicant for
5 certification has been certified as a reinsurer in a national association of
6 insurance commissioners-accredited jurisdiction, the commissioner has the
7 discretion to defer to that jurisdiction's certification and to defer to the
8 rating assigned by that jurisdiction, if the assuming insurer submits a
9 properly executed form cr-1 in accordance with the instructions and as
10 prescribed and adopted by the national association of insurance
11 commissioners and the commissioner of insurance and such additional
12 information as the commissioner requires. The assuming insurer shall be
13 considered to be a certified reinsurer in this state.

14 (B) Any change in the certified reinsurer's status or rating in the other
15 jurisdiction shall apply automatically in this state as of the date it takes
16 effect in the other jurisdiction. The certified reinsurer shall notify the
17 commissioner of any change in its status or rating within 10 days after
18 receiving notice of the change.

19 (C) The commissioner may withdraw recognition of the other
20 jurisdiction's rating at any time and assign a new rating in accordance with
21 subsection (g)(2)(H).

22 (D) The commissioner may withdraw recognition of the other
23 jurisdiction's certification at any time, with written notice to the certified
24 reinsurer. Unless the commissioner suspends or revokes the certified
25 reinsurer's certification in accordance with subsection (g)(2)(H), the
26 certified reinsurer's certification shall remain in good standing in this state
27 for a period of three months, and such period shall be extended if
28 additional time is necessary to consider the assuming insurer's application
29 for certification in this state.

30 (5) *Mandatory funding clause.* In addition to the clauses required
31 under subsection (n) reinsurance contracts entered into or renewed under
32 this section shall include a proper funding clause, that requires the certified
33 reinsurer to provide and maintain security in an amount sufficient to avoid
34 the imposition of any financial statement penalty on the ceding insurer
35 under this section for reinsurance ceded to the certified reinsurer.

36 (6) The commissioner shall comply with all reporting and notification
37 requirements that may be established by the national association of
38 insurance commissioners with respect to certified reinsurers and qualified
39 jurisdictions.

40 (h) *Credit for reinsurance – reciprocal jurisdictions.* (1) Pursuant to
41 K.S.A. 40-221a(a)(6), and amendments thereto, the commissioner shall
42 allow credit for reinsurance ceded by a domestic insurer to an assuming
43 insurer that is licensed to write reinsurance by, and has its head office or is

1 domiciled in, a reciprocal jurisdiction, and that meets the other
2 requirements of this section.

3 (2) A "reciprocal jurisdiction" is a jurisdiction, as designated by the
4 commissioner pursuant to subsection (h)(4), that meets one of the
5 following:

6 (A) A non-U.S. jurisdiction that is subject to an in-force covered
7 agreement with the United States, each within its legal authority, or, in the
8 case of a covered agreement between the United States and the European
9 union, is a member state of the European union. For purposes of this
10 subsection, a "covered agreement" is an agreement entered into pursuant to
11 the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C.
12 §§ 313 and 314, that is currently in effect or in a period of provisional
13 application and addresses the elimination, under specified conditions, of
14 collateral requirements as a condition for entering into any reinsurance
15 agreement with a ceding insurer domiciled in this state or for allowing the
16 ceding insurer to recognize credit for reinsurance;

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

20 (C) a qualified jurisdiction, as determined by the commissioner
21 pursuant to K.S.A. 40-221a(a)(5)(C), and amendments thereto, and
22 subsection (g)(3), that is not otherwise described in subparagraph (A) or
23 (B) and that the commissioner determines meets all of the following
24 additional requirements:

25 (i) Provides that an insurer that has its head office or is domiciled in
26 such qualified jurisdiction shall receive credit for reinsurance ceded to a
27 United States-domiciled assuming insurer in the same manner as credit for
28 reinsurance is received for reinsurance assumed by insurers domiciled in
29 such qualified jurisdiction;

30 (ii) does not require a United States-domiciled assuming insurer to
31 establish or maintain a local presence as a condition for entering into a
32 reinsurance agreement with any ceding insurer subject to regulation by the
33 non-U.S. jurisdiction or as a condition for allowing the ceding insurer to
34 recognize credit for such reinsurance;

35 (iii) recognizes the United States state regulatory approach to group
36 supervision and group capital, by providing written confirmation by a
37 competent regulatory authority, in such qualified jurisdiction, that insurers
38 and insurance groups that are domiciled or maintain their headquarters in
39 this state or another jurisdiction accredited by the national association of
40 insurance commissioners shall be subject only to worldwide prudential
41 insurance group supervision including worldwide group governance,
42 solvency and capital and reporting, as applicable, by the commissioner or
43 the commissioner of the domiciliary state and shall not be subject to group

1 supervision at the level of the worldwide parent undertaking of the
2 insurance or reinsurance group by the qualified jurisdiction; and

3 (iv) provides written confirmation by a competent regulatory
4 authority in such qualified jurisdiction that information regarding insurers
5 and their parent, subsidiary or affiliated entities, if applicable, shall be
6 provided to the commissioner in accordance with a memorandum of
7 understanding or similar document between the commissioner and such
8 qualified jurisdiction, including, but not limited to, the international
9 association of insurance supervisors multilateral memorandum of
10 understanding or other multilateral memoranda of understanding
11 coordinated by the national association of insurance commissioners.

12 (3) Credit shall be allowed when the reinsurance is ceded from an
13 insurer domiciled in this state to an assuming insurer meeting each of the
14 conditions set forth below.

15 (A) The assuming insurer shall be licensed to transact reinsurance by,
16 and have its head office or be domiciled in, a reciprocal jurisdiction.

17 (B) The assuming insurer shall have and maintain on an ongoing
18 basis minimum capital and surplus, or its equivalent, calculated on at least
19 an annual basis as of the preceding December 31 or at the annual date
20 otherwise statutorily required to be reported to the reciprocal jurisdiction,
21 and confirmed as set forth in paragraph (3)(G) according to the
22 methodology of its domiciliary jurisdiction, in the following amounts:

23 (i) Not less than \$250,000,000; or

24 (ii) if the assuming insurer is an association, including incorporated
25 and individual unincorporated underwriters:

26 (a) Minimum capital and surplus equivalent, net of liabilities, or own
27 funds of the equivalent of at least \$250,000,000; and

28 (b) a central fund containing a balance of the equivalent of at least
29 \$250,000,000.

30 (C) The assuming insurer shall have and maintain on an ongoing
31 basis a minimum solvency or capital ratio, as applicable, as follows:

32 (i) If the assuming insurer has its head office or is domiciled in a
33 reciprocal jurisdiction, as defined in subsection (h)(2)(A), the ratio
34 specified in the applicable covered agreement;

35 (ii) if the assuming insurer is domiciled in a reciprocal jurisdiction, as
36 defined in subsection (h)(2)(B), a risk-based capital ratio of 300% of the
37 authorized control level, calculated in accordance with the formula
38 developed by the national association of insurance commissioners; or

39 (iii) if the assuming insurer is domiciled in a reciprocal jurisdiction,
40 as defined in subsection (h)(2)(C), after consultation with the reciprocal
41 jurisdiction and considering any recommendations published through the
42 national association of insurance commissioners committee process, such
43 solvency or capital ratio as the commissioner determines to be an effective

1 measure of solvency.

2 (D) The assuming insurer shall agree to and provide adequate
3 assurance, in the form of a properly executed form rj-1 in accordance with
4 the instructions and as prescribed and adopted by the national association
5 of insurance commissioners and the commissioner of insurance, of its
6 agreement to the following:

7 (i) The assuming insurer shall agree to provide prompt written notice
8 and explanation to the commissioner if it falls below the minimum
9 requirements set forth in subparagraph (B) or (C) or if any regulatory
10 action is taken against it for serious noncompliance with applicable law;
11 and

12 (ii) the assuming insurer shall consent in writing to the jurisdiction of
13 the courts of this state and to the appointment of the commissioner as
14 agent for service of process.

15 (a) The commissioner may also require that such consent be provided
16 and included in each reinsurance agreement under the commissioner's
17 jurisdiction.

18 (b) Nothing in this provision shall limit or in any way alter the
19 capacity of parties to a reinsurance agreement to agree to alternative
20 dispute resolution mechanisms, except to the extent such agreements are
21 unenforceable under applicable insolvency or delinquency laws.

22 (iii) The assuming insurer shall consent in writing to pay all final
23 judgments, wherever enforcement is sought, obtained by a ceding insurer,
24 that have been declared enforceable in the territory where the judgment
25 was obtained.

26 (iv) Each reinsurance agreement shall include a provision requiring
27 the assuming insurer to provide security in an amount equal to 100% of the
28 assuming insurer's liabilities attributable to reinsurance ceded pursuant to
29 that agreement if the assuming insurer resists enforcement of a final
30 judgment that is enforceable under the law of the jurisdiction in which it
31 was obtained or a properly enforceable arbitration award, whether
32 obtained by the ceding insurer or by its legal successor on behalf of its
33 estate, if applicable, assuming insurer resists enforcement of a final
34 judgment that is enforceable under the law of the jurisdiction in which it
35 was obtained or a properly enforceable arbitration award, whether
36 obtained by the ceding insurer or by its legal successor on behalf of its
37 estate, if applicable.

38 (v) The assuming insurer shall confirm that it is not presently
39 participating in any solvent scheme of arrangement that involves this
40 state's ceding insurers and agree to notify the ceding insurer and the
41 commissioner and to provide 100% security to the ceding insurer
42 consistent with the terms of the scheme, if the assuming insurer enters into
43 such a solvent scheme of arrangement. Such security shall be in a form

1 consistent with the provisions of K.S.A. 40-221a(a)(5) and (b), and
2 amendments thereto, and subsections (k), (l) and (m). For purposes of this
3 section, the term "solvent scheme of arrangement" means a foreign or alien
4 statutory or regulatory compromise procedure subject to requisite majority
5 creditor approval and judicial sanction in the assuming insurer's home
6 jurisdiction either to finally commute liabilities of duly noticed classed
7 members or creditors of a solvent debtor, or to reorganize or restructure the
8 debts and obligations of a solvent debtor on a final basis, and that may be
9 subject to judicial recognition and enforcement of the arrangement by a
10 governing authority outside the ceding insurer's home jurisdiction.

11 (vi) The assuming insurer shall agree in writing to meet the
12 applicable information filing requirements as set forth in subparagraph (E).

13 (E) The assuming insurer or its legal successor shall provide, if
14 requested by the commissioner, on behalf of itself and any legal
15 predecessors, the following documentation to the commissioner:

16 (i) For the two years preceding entry into the reinsurance agreement
17 and annually thereafter, the assuming insurer's annual audited financial
18 statements, in accordance with the applicable law of the jurisdiction of its
19 head office or domiciliary jurisdiction, as applicable, including the
20 external audit report;

21 (ii) for the two years preceding entry into the reinsurance agreement,
22 the solvency and financial condition report or actuarial opinion, if filed
23 with the assuming insurer's supervisor;

24 (iii) prior to entry into the reinsurance agreement and not more than
25 semi-annually thereafter, an updated list of all disputed and overdue
26 reinsurance claims outstanding for 90 days or more, regarding reinsurance
27 assumed from ceding insurers domiciled in the United States; and

28 (iv) prior to entry into the reinsurance agreement and not more than
29 semi-annually thereafter, information regarding the assuming insurer's
30 assumed reinsurance by the ceding insurer, ceded reinsurance by the
31 assuming insurer, and reinsurance recoverable on paid and unpaid losses
32 by the assuming insurer to allow for the evaluation of the criteria set forth
33 in subparagraph (F).

34 (F) The assuming insurer shall maintain a practice of prompt payment
35 of claims under reinsurance agreements. The lack of prompt payment will
36 be evidenced if any of the following criteria is met:

37 (i) More than 15% of the reinsurance recoverables from the assuming
38 insurer are overdue and in dispute as reported to the commissioner;

39 (ii) more than 15% of the assuming insurer's ceding insurers or
40 reinsurers have overdue reinsurance recoverable on paid losses of 90 days
41 or more that are not in dispute and that exceed \$100,000 for each ceding
42 insurer, or as otherwise specified in a covered agreement; or

43 (iii) the aggregate amount of reinsurance recoverable on paid losses

1 that are not in dispute, but are overdue by 90 days or more, exceeds
2 \$50,000,000, or as otherwise specified in a covered agreement.

3 (G) The assuming insurer's supervisory authority shall confirm to the
4 commissioner on an annual basis that the assuming insurer complies with
5 the requirements set forth in subparagraphs (B) and (C).

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

8 (4) The commissioner shall timely create and publish a list of
9 reciprocal jurisdictions.

10 (A) A list of reciprocal jurisdictions is published through the national
11 association of insurance commissioners' committee process. The
12 commissioner's list shall include any reciprocal jurisdiction, as defined
13 under subsections (h)(2)(A) and (B), and shall consider any other
14 reciprocal jurisdiction included on the NAIC list. The commissioner may
15 approve a jurisdiction that does not appear on the national association of
16 insurance commissioners' list of reciprocal jurisdictions as provided by
17 applicable law, regulation, or in accordance with criteria published through
18 the national association of insurance commissioner committee process.

19 (B) The commissioner may remove a jurisdiction from the list of
20 reciprocal jurisdictions upon a determination that the jurisdiction no longer
21 meets one or more of the requirements of a reciprocal jurisdiction, as
22 provided by applicable law, regulation, or in accordance with a process
23 published through the national association of insurance commissioner
24 committee process, except that the commissioner shall not remove from
25 the list a reciprocal jurisdiction, as defined under subsections (h)(2)(A) and
26 (B). Upon removal of a reciprocal jurisdiction from this list credit for
27 reinsurance ceded to an assuming insurer domiciled in that jurisdiction
28 shall be allowed, if otherwise allowed pursuant to K.S.A. 40-221a, and
29 amendments thereto, or this section.

30 (5) The commissioner shall timely create and publish a list of
31 assuming insurers that have satisfied the conditions set forth in this section
32 and to which cessions shall be granted credit in accordance with this
33 section.

34 (A) If a national association of insurance commissioners accredited
35 jurisdiction has determined that the conditions set forth in paragraph (3)
36 have been met, the commissioner has the discretion to defer to that
37 jurisdiction's determination, and add such assuming insurer to the list of
38 assuming insurers to which cessions shall be granted credit in accordance
39 with this subsection. The commissioner may accept financial
40 documentation filed with another national association of insurance
41 commissioners accredited jurisdiction or with the national association of
42 insurance commissioners in satisfaction of the requirements of paragraph
43 (3).

1 (B) When requesting that the commissioner defer to another national
2 association of insurance commissioners accredited jurisdiction's
3 determination, an assuming insurer shall submit a properly executed form
4 rj-1 in accordance with the instructions and as prescribed and adopted by
5 the national association of insurance commissioners and the commissioner
6 of insurance and additional information as the commissioner may require.
7 A state that has received such a request shall notify other states through the
8 national association of insurance commissioners committee process and
9 provide relevant information with respect to the determination of
10 eligibility.

11 (6) If the commissioner determines that an assuming insurer no
12 longer meets one or more of the requirements under this section, the
13 commissioner may revoke or suspend the eligibility of the assuming
14 insurer for recognition under this section.

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

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

27 (7) Before denying statement credit or imposing a requirement to post
28 security with respect to subsection (h)(6) or adopting any similar
29 requirement that will have substantially the same regulatory impact as
30 security, the commissioner shall:

31 (A) Communicate with the ceding insurer, the assuming insurer, and
32 the assuming insurer's supervisory authority that the assuming insurer no
33 longer satisfies one of the conditions listed in paragraph (3);

34 (B) provide the assuming insurer with 30 days from the initial
35 communication to submit a plan to remedy the defect, and 90 days from
36 the initial communication to remedy the defect, except in exceptional
37 circumstances in which a shorter period is necessary for policyholder and
38 other consumer protection;

39 (C) after the expiration of 90 days or less, as set out in subparagraph
40 (B), if the commissioner determines that no or insufficient action was
41 taken by the assuming insurer, the commissioner may impose any of the
42 requirements as set out in this subsection; and

43 (D) provide a written explanation to the assuming insurer of any of

1 the requirements set out in this subsection.

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

7 (i) *Credit for reinsurance required by law.* Pursuant to K.S.A. 40-
8 221a(a)(7), and amendments thereto, the commissioner shall allow credit
9 for reinsurance ceded by a domestic insurer to an assuming insurer not
10 meeting the requirements of K.S.A. 40-221a(a)(1) through (6), and
11 amendments thereto, but only as to the insurance of risks located in
12 jurisdictions where the reinsurance is required by the applicable law or
13 regulation of that jurisdiction. As used in this section, "jurisdiction" means
14 state, district or territory of the United States and any lawful national
15 government.

16 (j) Asset or reduction from liability for reinsurance ceded to an
17 unauthorized assuming insurer not meeting the requirements of
18 subsections (c) through (i).

19 (1) Pursuant to K.S.A. 40-221a(b), and amendments thereto, the
20 commissioner shall allow a reduction from liability for reinsurance ceded
21 by a domestic insurer to an assuming insurer not meeting the requirements
22 of K.S.A. 40-221a(a), and amendments thereto, in an amount not
23 exceeding the liabilities carried by the ceding insurer. The reduction shall
24 be in the amount of funds held by or on behalf of the ceding insurer,
25 including funds held in trust for the exclusive benefit of the ceding insurer,
26 under a reinsurance contract with such assuming insurer as security for the
27 payment of obligations under the reinsurance contract. The security shall
28 be held in the United States subject to withdrawal solely by, and under the
29 exclusive control of, the ceding insurer or, in the case of a trust, held in a
30 qualified United States financial institution, as defined in K.S.A. 40-
31 221a(c)(2), and amendments thereto. This security may be in the form of
32 any of the following:

33 (A) Cash;

34 (B) securities listed by the securities valuation office of the national
35 association of insurance commissioners, including those deemed exempt
36 from filing, as defined by the purposes and procedures manual of the
37 securities valuation office and qualifying as admitted assets;

38 (C) clean, irrevocable, unconditional and "evergreen" letters of credit
39 issued or confirmed by a qualified United States institution, as defined in
40 K.S.A. 40-221a(c), and amendments thereto, effective no later than
41 December 31 of the year for which filing is being made, and in the
42 possession of, or in trust for, the ceding insurer on or before the filing date
43 of its annual statement. Letters of credit meeting applicable standards of

1 issuer acceptability as of the dates of their issuance, or confirmation, shall,
2 notwithstanding the issuing, or confirming, institution's subsequent failure
3 to meet applicable standards of issuer acceptability, continue to be
4 acceptable as security until their expiration, extension, renewal,
5 modification or amendment, whichever occurs first; or

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

7 (2) An admitted asset or a reduction from liability for reinsurance
8 ceded to an unauthorized assuming insurer pursuant to this section shall be
9 allowed only when the requirements of subsection (n) and the applicable
10 portions of subsection (k), (l) or (m) have been satisfied.

11 (k) Trust agreements qualified under subsection (j).

12 (1) As used in this subsection:

13 (A) "Beneficiary" means the entity for whose sole benefit the trust
14 has been established and any successor of the beneficiary by operation of
15 law. If a court of law appoints a successor in interest to the named
16 beneficiary, then the named beneficiary includes and is limited to the court
17 appointed domiciliary receiver, including conservator, rehabilitator or
18 liquidator.

19 (B) "Grantor" means the entity that has established a trust for the sole
20 benefit of the beneficiary. When established in conjunction with a
21 reinsurance agreement, the grantor is the unlicensed, unaccredited
22 assuming insurer.

23 (C) "Obligations" means:

24 (i) Reinsured losses and allocated loss expenses paid by the ceding
25 company, but not recovered from the assuming insurer;

26 (ii) reserves for reinsured losses reported and outstanding;

27 (iii) reserves for reinsured losses incurred but not reported; and

28 (iv) reserves for allocated reinsured loss expenses and unearned
29 premiums.

30 (2) *Required conditions.* (A) The trust agreement shall be entered into
31 between the beneficiary, the grantor and a trustee, that shall be a qualified
32 United States financial institution, as defined in K.S.A. 40-221a(c)(2), and
33 amendments thereto.

34 (B) The trust agreement shall create a trust account into which assets
35 shall be deposited.

36 (C) All assets in the trust account shall be held by the trustee at the
37 trustee's office in the United States.

38 (D) The trust agreement shall provide that:

39 (i) The beneficiary shall have the right to withdraw assets from the
40 trust account at any time, without notice to the grantor, subject only to
41 written notice from the beneficiary to the trustee;

42 (ii) no other statement or document shall be required to be presented
43 to withdraw assets, except that the beneficiary may be required to

- 1 acknowledge receipt of withdrawn assets;
- 2 (iii) it is not subject to any conditions or qualifications outside of the
3 trust agreement; and
- 4 (iv) it shall not contain references to any other agreements or
5 documents except as provided for in subparagraphs (K) and (L).
- 6 (E) The trust agreement shall be established for the sole benefit of the
7 beneficiary.
- 8 (F) The trust agreement shall require the trustee to:
- 9 (i) Receive assets and hold all assets in a safe place;
- 10 (ii) determine that all assets are in such form that the beneficiary, or
11 the trustee upon direction by the beneficiary, may whenever necessary
12 negotiate any such assets, without consent or signature from the grantor or
13 any other person or entity;
- 14 (iii) furnish to the grantor and the beneficiary a statement of all assets
15 in the trust account upon its inception and at intervals no less frequent than
16 the end of each calendar quarter;
- 17 (iv) notify the grantor and the beneficiary within 10 days, of any
18 deposits to or withdrawals from the trust account;
- 19 (v) upon written demand of the beneficiary, immediately take any and
20 all steps necessary to transfer absolutely and unequivocally all right, title
21 and interest in the assets held in the trust account to the beneficiary and
22 deliver physical custody of the assets to the beneficiary; and
- 23 (vi) allow no substitutions or withdrawals of assets from the trust
24 account, except on written instructions from the beneficiary, except that
25 the trustee may, without the consent of but with notice to the beneficiary,
26 upon call or maturity of any trust asset, withdraw such asset upon
27 condition that the proceeds are paid into the trust account.
- 28 (G) The trust agreement shall provide that at least 30 days, but not
29 more than 45 days, prior to termination of the trust account, written
30 notification of termination shall be delivered by the trustee to the
31 beneficiary.
- 32 (H) The trust agreement shall be made subject to, and governed by,
33 the laws of the state in which the trust is domiciled.
- 34 (I) The trust agreement shall prohibit invasion of the trust corpus for
35 the purpose of paying a commission to, or reimbursing the expenses of, the
36 trustee. In order for a letter of credit to qualify as an asset of the trust, the
37 trustee shall have the right and the obligation pursuant to the deed of trust
38 or some other binding agreement, as duly approved by the commissioner,
39 to immediately draw down the full amount of the letter of credit and hold
40 the proceeds in trust for the beneficiaries of the trust if the letter of credit
41 will otherwise expire without being renewed or replaced.
- 42 (J) The trust agreement shall provide that the trustee shall be liable
43 for its negligence, willful misconduct or lack of good faith. The failure of

1 the trustee to draw against the letter of credit in circumstances where such
2 draw would be required shall be deemed to be negligence or willful
3 misconduct.

4 (K) Notwithstanding other provisions of this section, when a trust
5 agreement is established in conjunction with a reinsurance agreement
6 covering risks other than life, annuities and accident and health, where it is
7 customary practice to provide a trust agreement for a specific purpose, the
8 trust agreement may provide that the ceding insurer shall undertake to use
9 and apply amounts drawn upon the trust account, without diminution
10 because of the insolvency of the ceding insurer or the assuming insurer,
11 only for the following purposes:

12 (i) To pay or reimburse the ceding insurer for the assuming insurer's
13 share under the specific reinsurance agreement regarding any losses and
14 allocated loss expenses paid by the ceding insurer, but not recovered from
15 the assuming insurer, or for unearned premiums due to the ceding insurer
16 if not otherwise paid by the assuming insurer;

17 (ii) to make payment to the assuming insurer of any amounts held in
18 the trust account that exceed 102% of the actual amount required to fund
19 the assuming insurer's obligations under the specific reinsurance
20 agreement; or

21 (iii) where the ceding insurer has received notification of termination
22 of the trust account and where the assuming insurer's entire obligations
23 under the specific reinsurance agreement remain unliquidated and
24 undischarged 10 days prior to the termination date, to withdraw amounts
25 equal to the obligations and deposit those amounts in a separate account, in
26 the name of the ceding insurer in any qualified United States financial
27 institution, as defined in K.S.A. 40-221a(c)(2), and amendments thereto,
28 apart from its general assets, in trust for such uses and purposes specified
29 in clauses (i) and (ii) as may remain executory after such withdrawal and
30 for any period after the termination date.

31 (L) Notwithstanding other provisions of this subsection, when a trust
32 agreement is established to meet the requirements of subsection (j) in
33 conjunction with a reinsurance agreement covering life, annuities or
34 accident and health risks, where it is customary to provide a trust
35 agreement for a specific purpose, the trust agreement may provide that the
36 ceding insurer shall undertake to use and apply amounts drawn upon the
37 trust account, without diminution because of the insolvency of the ceding
38 insurer or the assuming insurer, only for the following purposes:

39 (i) To pay or reimburse the ceding insurer for:

40 (a) The assuming insurer's share under the specific reinsurance
41 agreement of premiums returned, but not yet recovered from the assuming
42 insurer, to the owners of policies reinsured under the reinsurance
43 agreement on account of cancellations of the policies; and

1 (b) the assuming insurer's share under the specific reinsurance
2 agreement of surrenders and benefits or losses paid by the ceding insurer,
3 but not yet recovered from the assuming insurer, under the terms and
4 provisions of the policies reinsured under the reinsurance agreement;

5 (ii) to pay to the assuming insurer amounts held in the trust account in
6 excess of the amount necessary to secure the credit or reduction from
7 liability for reinsurance taken by the ceding insurer; or

8 (iii) where the ceding insurer has received notification of termination
9 of the trust and where the assuming insurer's entire obligations under the
10 specific reinsurance agreement remain unliquidated and undischarged 10
11 days prior to the termination date, to withdraw amounts equal to the
12 assuming insurer's share of liabilities, to the extent that the liabilities have
13 not yet been funded by the assuming insurer, and deposit those amounts in
14 a separate account, in the name of the ceding insurer in any qualified
15 United States financial institution apart from its general assets, in trust for
16 the uses and purposes specified in clauses (i) and (ii) as may remain
17 executory after withdrawal and for any period after the termination date.

18 (M) Either the reinsurance agreement or the trust agreement shall
19 stipulate that assets deposited in the trust account shall be valued
20 according to their current fair market value and shall consist only of cash
21 in United States dollars, certificates of deposit issued by a United States
22 bank and payable in United States dollars, and investments permitted by
23 the insurance code or any combination of the above, provided investments
24 in or issued by an entity controlling, controlled by or under common
25 control with either the grantor or the beneficiary of the trust shall not
26 exceed 5% of total investments. The agreement may further specify the
27 types of investments to be deposited. If the reinsurance agreement covers
28 life, annuities or accident and health risks, then the provisions required by
29 this paragraph shall be included in the reinsurance agreement.

30 (3) *Permitted conditions.* (A) The trust agreement may provide that
31 the trustee may resign upon delivery of a written notice of resignation,
32 effective not less than 90 days after the beneficiary and grantor receive the
33 notice and that the trustee may be removed by the grantor by delivery to
34 the trustee and the beneficiary of a written notice of removal, effective not
35 less than 90 days after the trustee and the beneficiary receive the notice,
36 provided that no such resignation or removal shall be effective until a
37 successor trustee has been duly appointed and approved by the beneficiary
38 and the grantor and all assets in the trust have been duly transferred to the
39 new trustee.

40 (B) The grantor may have the full and unqualified right to vote any
41 shares of stock in the trust account and to receive from time to time
42 payments of any dividends or interest upon any shares of stock or
43 obligations included in the trust account. Any interest or dividends shall be

1 either forwarded promptly upon receipt to the grantor or deposited in a
2 separate account established in the grantor's name.

3 (C) The trustee may be given authority to invest, and accept
4 substitutions of, any funds in the account, provided that no investment or
5 substitution shall be made without prior approval of the beneficiary, unless
6 the trust agreement specifies categories of investments acceptable to the
7 beneficiary and authorizes the trustee to invest funds and to accept
8 substitutions that the trustee determines are at least equal in current fair
9 market value to the assets withdrawn and that are consistent with the
10 restrictions in paragraph (4)(A)(ii).

11 (D) The trust agreement may provide that the beneficiary may at any
12 time designate a party to which all or part of the trust assets are to be
13 transferred. Transfer may be conditioned upon the trustee receiving, prior
14 to or simultaneously, other specified assets.

15 (E) The trust agreement may provide that, upon termination of the
16 trust account, all assets not previously withdrawn by the beneficiary shall,
17 with written approval by the beneficiary, be delivered over to the grantor.

18 (4) *Additional conditions applicable to reinsurance agreements.* (A)
19 A reinsurance agreement may contain provisions that:

20 (i) Require the assuming insurer to enter into a trust agreement and to
21 establish a trust account for the benefit of the ceding insurer, and
22 specifying what the agreement is to cover;

23 (ii) require the assuming insurer, prior to depositing assets with the
24 trustee, to execute assignments or endorsements in blank, or to transfer
25 legal title to the trustee of all shares, obligations or any other assets
26 requiring assignments, in order that the ceding insurer, or the trustee upon
27 the direction of the ceding insurer, may whenever necessary negotiate
28 these assets without consent or signature from the assuming insurer or any
29 other entity;

30 (iii) require that all settlements of account between the ceding insurer
31 and the assuming insurer be made in cash or its equivalent; and

32 (iv) stipulate that the assuming insurer and the ceding insurer agree
33 that the assets in the trust account, established pursuant to the provisions of
34 the reinsurance agreement, may be withdrawn by the ceding insurer at any
35 time, notwithstanding any other provisions in the reinsurance agreement,
36 and shall be utilized and applied by the ceding insurer or its successors in
37 interest by operation of law, including without limitation any liquidator,
38 rehabilitator, receiver or conservator of such company, without diminution
39 because of insolvency on the part of the ceding insurer or the assuming
40 insurer, only for the following purposes:

41 (a) To pay or reimburse the ceding insurer for:

42 (1) The assuming insurer's share under the specific reinsurance
43 agreement of premiums returned, but not yet recovered from the assuming

1 insurer, to the owners of policies reinsured under the reinsurance
2 agreement because of cancellations of such policies;

3 (2) the assuming insurer's share of surrenders and benefits or losses
4 paid by the ceding insurer pursuant to the provisions of the policies
5 reinsured under the reinsurance agreement; and

6 (3) any other amounts necessary to secure the credit or reduction
7 from liability for reinsurance taken by the ceding insurer;

8 (b) to make payment to the assuming insurer of amounts held in the
9 trust account in excess of the amount necessary to secure the credit or
10 reduction from liability for reinsurance taken by the ceding insurer.

11 (B) The reinsurance agreement also may contain provisions that:

12 (i) Give the assuming insurer the right to seek approval from the
13 ceding insurer, which shall not be unreasonably or arbitrarily withheld, to
14 withdraw from the trust account all or any part of the trust assets and
15 transfer those assets to the assuming insurer, provided:

16 (a) The assuming insurer shall, at the time of withdrawal, replace the
17 withdrawn assets with other qualified assets having a current fair market
18 value equal to the market value of the assets withdrawn so as to maintain
19 at all times the deposit in the required amount; or

20 (b) after withdrawal and transfer, the current fair market value of the
21 trust account is no less than 102% of the required amount;

22 (ii) provide for the return of any amount withdrawn in excess of the
23 actual amounts required for subsection (k)(4)(A)(iv), and for interest
24 payments at a rate not in excess of the prime rate of interest on such
25 amounts;

26 (iii) permit the award by any arbitration panel or court of competent
27 jurisdiction of:

28 (a) Interest at a rate different from that provided in subparagraph (ii)
29 of this paragraph;

30 (b) court or arbitration costs;

31 (c) attorney's fees; and

32 (d) any other reasonable expenses.

33 (5) *Financial reporting.* A trust agreement may be used to reduce any
34 liability for reinsurance ceded to an unauthorized assuming insurer in
35 financial statements required to be filed with this department in
36 compliance with the provisions of this section when established on or
37 before the date of filing of the financial statement of the ceding insurer.
38 Further, the reduction for the existence of an acceptable trust account may
39 be up to the current fair market value of acceptable assets available to be
40 withdrawn from the trust account at that time, but such reduction shall be
41 no greater than the specific obligations under the reinsurance agreement
42 that the trust account was established to secure.

43 (6) The failure of any trust agreement to specifically identify the

1 beneficiary, as defined in paragraph (1), shall not be construed to affect
2 any actions or rights that the commissioner may take or possess pursuant
3 to the provisions of the laws of this state.

4 (1) *Letters of credit qualified under subsection (j)(1).* (1) The letter of
5 credit shall be clean, irrevocable, unconditional and issued or confirmed
6 by a qualified United States financial institution, as defined in K.S.A. 40-
7 221a(c)(1), and amendments thereto. The letter of credit shall contain an
8 issue date and expiration date and shall stipulate that the beneficiary need
9 only draw a sight draft under the letter of credit and present it to obtain
10 funds and that no other document need be presented. The letter of credit
11 also shall indicate that it is not subject to any condition or qualifications
12 outside of the letter of credit. In addition, the letter of credit itself shall not
13 contain reference to any other agreements, documents or entities, except as
14 provided in subsection (m)(8)(A). As used in this subsection, "beneficiary"
15 means the domestic insurer for whose benefit the letter of credit has been
16 established and any successor of the beneficiary by operation of law. If a
17 court of law appoints a successor in interest to the named beneficiary, then
18 the named beneficiary includes and is limited to the court appointed
19 domiciliary receiver, including conservator, rehabilitator or liquidator.

20 (2) The heading of the letter of credit may include a boxed section
21 containing the name of the applicant and other appropriate notations to
22 provide a reference for the letter of credit. The boxed section shall be
23 clearly marked to indicate that such information is for internal
24 identification purposes only.

25 (3) The letter of credit shall contain a statement to the effect that the
26 obligation of the qualified United States financial institution under the
27 letter of credit is in no way contingent upon reimbursement with respect
28 thereto.

29 (4) The term of the letter of credit shall be for at least one year and
30 shall contain an "evergreen clause" that prevents the expiration of the letter
31 of credit without due notice from the issuer. The "evergreen clause" shall
32 provide for a period of no less than 30 days notice prior to expiration date
33 or nonrenewal.

34 (5) The letter of credit shall state whether it is subject to and
35 governed by the laws of this state or the uniform customs and practice for
36 documentary credits of the international chamber of commerce publication
37 600, UCP 600, or international standby practices of the international
38 chamber of commerce publication 590, ISP98, or any successor
39 publication, and all drafts drawn thereunder shall be presentable at an
40 office in the United States of a qualified United States financial institution.

41 (6) If the letter of credit is made subject to the uniform customs and
42 practice for documentary credits of the international chamber of commerce
43 publication 600, UCP 600, or international standby practices of the

1 international chamber of commerce publication 590, ISP98, or any
2 successor publication, then the letter of credit shall specifically address
3 and provide for an extension of time to draw against the letter of credit in
4 the event that one or more of the occurrences specified in article 36 of
5 publication 600 or any other successor publication, occur.

6 (7) If the letter of credit is issued by a financial institution authorized
7 to issue letters of credit, other than a qualified United States financial
8 institution as described in subsection (m)(1), then the following additional
9 requirements shall be met:

10 (A) The issuing financial institution shall formally designate the
11 confirming qualified United States financial institution as its agent for the
12 receipt and payment of the drafts; and

13 (B) the "evergreen clause" shall provide for 30 days' notice prior to
14 the expiration date for nonrenewal.

15 (8) *Reinsurance agreement provisions.* (A) The reinsurance
16 agreement in conjunction with which the letter of credit is obtained may
17 contain provisions that:

18 (i) Require the assuming insurer to provide letters of credit to the
19 ceding insurer and specify what they are to cover;

20 (ii) stipulate that the assuming insurer and ceding insurer agree that
21 the letter of credit provided by the assuming insurer pursuant to the
22 provisions of the reinsurance agreement may be drawn upon at any time,
23 notwithstanding any other provisions in the agreement, and shall be
24 utilized by the ceding insurer or its successors in interest only for one or
25 more of the following reasons:

26 (a) To pay or reimburse the ceding insurer for:

27 (1) The assuming insurer's share under the specific reinsurance
28 agreement of premiums returned, but not yet recovered from the assuming
29 insurers, to the owners of policies reinsured under the reinsurance
30 agreement on account of cancellations of such policies;

31 (2) the assuming insurer's share, under the specific reinsurance
32 agreement, of surrenders and benefits or losses paid by the ceding insurer,
33 but not yet recovered from the assuming insurers, under the terms and
34 provisions of the policies reinsured under the reinsurance agreement; and

35 (3) any other amounts necessary to secure the credit or reduction
36 from liability for reinsurance taken by the ceding insurer;

37 (b) where the letter of credit will expire without renewal or be
38 reduced or replaced by a letter of credit for a reduced amount and where
39 the assuming insurer's entire obligations under the reinsurance agreement
40 remain unliquidated and undischarged 10 days prior to the termination
41 date, to withdraw amounts equal to the assuming insurer's share of the
42 liabilities, to the extent that the liabilities have not yet been funded by the
43 assuming insurer and exceed the amount of any reduced or replacement

1 letter of credit, and deposit those amounts in a separate account in the
2 name of the ceding insurer in a qualified United States financial institution
3 apart from its general assets, in trust for such uses and purposes specified
4 in paragraph (8)(A)(ii)(a) as may remain after withdrawal and for any
5 period after the termination date; and

6 (iii) all of the provisions of subparagraph (A) shall be applied without
7 diminution because of insolvency on the part of the ceding insurer or
8 assuming insurer.

9 (B) Nothing contained in subparagraph (A) shall preclude the ceding
10 insurer and assuming insurer from providing for:

11 (i) An interest payment, at a rate not in excess of the prime rate of
12 interest, on the amounts held pursuant to paragraph (8)(A)(ii); or

13 (ii) the return of any amounts drawn down on the letters of credit in
14 excess of the actual amounts required for the above or any amounts that
15 are subsequently determined not to be due.

16 (m) *Other security.* A ceding insurer may take credit for
17 unencumbered funds withheld by the ceding insurer in the United States
18 subject to withdrawal solely by the ceding insurer and under its exclusive
19 control.

20 (n) *Reinsurance contract.* Credit will not be granted, nor an asset or
21 reduction from liability allowed, to a ceding insurer for reinsurance
22 effected with assuming insurers meeting the requirements of subsection
23 (c), (d), (e), (f), (g), (h), or (j) or otherwise in compliance with K.S.A. 40-
24 221a(a), and amendments thereto, after the adoption of this section unless
25 the reinsurance agreement:

26 (1) Includes a proper insolvency clause, that stipulates that
27 reinsurance is payable directly to the liquidator or successor without
28 diminution regardless of the status of the ceding company;

29 (2) includes a provision pursuant to K.S.A. 40-221a(a), and
30 amendments thereto, whereby the assuming insurer, if an unauthorized
31 assuming insurer, has submitted to the jurisdiction of an alternative dispute
32 resolution panel or court of competent jurisdiction within the United
33 States, has agreed to comply with all requirements necessary to give the
34 court or panel jurisdiction, has designated an agent upon whom service of
35 process may be effected, and has agreed to abide by the final decision of
36 the court or panel; and

37 (3) includes a proper reinsurance intermediary clause, if applicable,
38 that stipulates that the credit risk for the intermediary is carried by the
39 assuming insurer.

40 Sec. 2. K.S.A. 2020 Supp. 40-221a is hereby amended to read as
41 follows: 40-221a. (a) Credit for reinsurance shall be allowed a domestic
42 ceding insurer as either an asset or a reduction from liability on account of
43 reinsurance ceded only when the reinsurer meets the requirements of

1 ~~paragraphs~~ *paragraph* (1), (2), (3), (4), (5) ~~or~~, (6) *or* (7). Credit shall be
2 allowed under ~~paragraphs~~ *paragraph* (1), (2) or (3) ~~of this subsection~~ only
3 as respects cessions of those kinds or classes of business that the assuming
4 insurer is licensed or otherwise permitted to write or assume in its state of
5 domicile or, in the case of a United States branch of an alien assuming
6 insurer, in the state through which it is entered and licensed to transact
7 insurance or reinsurance. Credit shall be allowed only under ~~paragraphs~~
8 *paragraph* (3) or (4) ~~of this subsection~~ if the applicable requirements of
9 paragraph (7) have been satisfied.

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

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

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

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

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

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

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

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

43 (i) Maintains a surplus as regards policyholders in an amount not less

1 than \$20,000,000; and

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

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

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

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

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

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

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

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

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

43 (i) The trust fund for a single assuming insurer shall consist of funds

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

5 (ii) At any time after the assuming insurer has permanently
6 discontinued underwriting new business secured by the trust for at least
7 three full years, the commissioner with principal regulatory oversight of
8 the trust may authorize a reduction in the required trustee surplus, but
9 only after a finding, based on an assessment of the risk, that the new
10 required surplus level is adequate for the protection of United States
11 ceding insurers, policyholders and claimants in light of reasonably
12 foreseeable adverse loss development. The risk assessment may involve an
13 actuarial review, including an independent analysis of reserves and cash
14 flows, and shall consider all material risk factors, including, when
15 applicable, the lines of business involved, the stability of the incurred loss
16 estimates and the effect of the surplus requirements on the assuming
17 insurer's liquidity or solvency. The minimum required trustee surplus
18 shall not be reduced to an amount less than 30% of the assuming insurer's
19 liabilities attributable to reinsurance ceded by United States ceding
20 insurers covered by the trust;

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

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

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

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

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

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

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

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

13 (b) maintain an aggregate policyholders' surplus of at least
14 \$10,000,000,000;

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

19 (d) in addition, maintain a joint trusteed surplus of which
20 \$100,000,000 shall be held jointly for the benefit of United States
21 domiciled ceding insurers of any member of the group as additional
22 security for these liabilities; and

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

29 (5) Credit shall be allowed when the reinsurance is ceded to an
30 assuming insurer that has been certified by the commissioner as a reinsurer
31 in this state and the reinsurer secures its obligations in accordance with the
32 following requirements:

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

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

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

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

42 (iv) agree to submit to the jurisdiction of this state, appoint the
43 commissioner as the assuming insurer's agent for service of process in this

1 state, and agree to provide security for 100% of the assuming insurer's
2 liabilities attributable to reinsurance ceded by United States ceding
3 insurers if the assuming insurer resists enforcement of a final United States
4 judgment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (ii) If a certified reinsurer maintains a trust to fully secure its
38 obligations subject to subsection (a)(4), and chooses to secure its
39 obligations incurred as a certified reinsurer in the form of a multi-
40 beneficiary trust, the certified reinsurer shall maintain separate trust
41 accounts for its obligations incurred under reinsurance agreements issued
42 or renewed as a certified reinsurer with reduced security as permitted by
43 this subsection or comparable laws of other United States jurisdictions and

1 for its obligations subject to subsection (a)(4). It shall be a condition to the
2 grant of certification under subsection (a)(5) that the certified reinsurer
3 shall have bound itself, by the language of the trust and agreement with the
4 commissioner who has principal regulatory oversight of each such trust
5 account, to fund, upon termination of any such trust account, any
6 deficiency of any other such trust account out of the remaining surplus of
7 the terminated trust account.

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

13 (iv) With respect to obligations incurred by a certified reinsurer under
14 this subsection, if the security is insufficient, the commissioner shall
15 reduce the allowable credit by an amount proportionate to the deficiency,
16 and the commissioner has the discretion to impose further reductions in
17 allowable credit upon finding there is a material risk that the certified
18 reinsurer's obligations will not be paid in full when due.

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

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

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

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

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

43 (6) (A) *Credit shall be allowed when the reinsurance is ceded to an*

1 *assuming insurer meeting each of the conditions set forth below.*

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

5 *(a) A non-U.S. jurisdiction that is subject to an in-force covered*
6 *agreement with the United States, each within its legal authority, or, in the*
7 *case of a covered agreement between the United States and the European*
8 *Union, is a member state of the European Union. For purposes of this*
9 *subsection, a "covered agreement" is an agreement entered into pursuant*
10 *to Dodd-Frank wall street reform and consumer protection act, 31 U.S.C.*
11 *§§ 313 and 314, that is currently in effect or in a period of provisional*
12 *application and addresses the elimination, under specified conditions, of*
13 *collateral requirements as a condition for entering into any reinsurance*
14 *agreement with a ceding insurer domiciled in this state or for allowing the*
15 *ceding insurer to recognize credit for reinsurance;*

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

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

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

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

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

43 *(a) The assuming insurer shall provide prompt written notice and*

1 explanation to the commissioner if it falls below the minimum
2 requirements set forth in subsection (a)(6)(A)(ii) or (iii), or if any
3 regulatory action is taken against the assuming insurer for serious
4 noncompliance with applicable law;

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

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

18 (d) each reinsurance agreement shall include a provision requiring
19 the assuming insurer to provide security in an amount equal to 100% of
20 the assuming insurer's liabilities attributable to reinsurance ceded
21 pursuant to that agreement if the assuming insurer resists enforcement of a
22 final judgment that is enforceable under the law of the jurisdiction in
23 which it was obtained or a properly enforceable arbitration award,
24 whether obtained by the ceding insurer or by its legal successor on behalf
25 of its resolution estate; and

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

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

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

40 (vii) The assuming insurer's supervisory authority must confirm to
41 the commissioner on an annual basis, as of the preceding December 31 or
42 at the annual date otherwise statutorily reported to the reciprocal
43 jurisdiction, that the assuming insurer complies with the requirements set

1 *forth in subsection (a)(6)(A)(ii) or (iii).*

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

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

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

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

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

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

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

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

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

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

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

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

27 (I) *Nothing in this subsection shall:*

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

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

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

38 (~~7~~)(8) *If the assuming insurer is not licensed, accredited or certified to*
39 *transact insurance or reinsurance in this state, the credit permitted by*
40 *subsection (a)(3) and (a)(4) of this section shall not be allowed, unless the*
41 *assuming insurer agrees in the reinsurance agreement to do all of the*
42 *following:*

43 (A) (i) *In the event of the failure of the assuming insurer to perform*

1 its obligations under the terms of the reinsurance agreement, the assuming
2 insurer, at the request of the ceding insurer, will: Submit to the jurisdiction
3 of any court of competent jurisdiction in any state of the United States;
4 comply with all requirements necessary to give the court jurisdiction; and
5 abide by the final decision of the court or of any appellate court in the
6 event of an appeal; and

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

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

14 ~~(8)(9)~~ If the assuming insurer does not meet the requirements of
15 subsection (a)(1), (a)(2)~~–or~~, (a)(3) *or* (a)(6), the credit permitted by
16 subsection (a)(4) or (a)(5) shall not be allowed unless the assuming insurer
17 agrees in a trust agreement to the following conditions:

18 (A) Notwithstanding any other provisions in the trust instrument, if
19 the trust fund is inadequate because the trust fund contains an amount less
20 than the amount required by subsection (a)(4)(C), or if the grantor of the
21 trust has been declared insolvent or has been placed into receivership,
22 rehabilitation, liquidation or similar proceedings under the laws of the
23 trust's state or country of domicile, the trustee shall comply with an order
24 of the commissioner with regulatory oversight over the trust or with an
25 order of a court of competent jurisdiction directing the trustee to transfer
26 all of the assets of the trust fund to the commissioner with regulatory
27 oversight over the trust.

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

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

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

41 ~~(9)(10)~~ Credit for reinsurance ceded to a certified reinsurer is limited
42 to reinsurance contracts entered or renewed on or after the effective date of
43 the certification of the assuming insurer by the commissioner.

1 ~~(10)~~(11) If an accredited or certified reinsurer ceases to meet the
2 requirements of this section for accreditation or certification, the
3 commissioner may suspend or revoke the reinsurer's accreditation or
4 certification.

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

- 9 (i) The reinsurer waives its right to a hearing;
- 10 (ii) the commissioner's order is based on regulatory action by the
11 reinsurer's domiciliary jurisdiction or by the voluntary surrender or
12 termination of the reinsurer's eligibility to transact insurance or reinsurance
13 business in its domiciliary jurisdiction or in the primary certifying state of
14 the reinsurer under subsection (a)(5)(F); or
- 15 (iii) the commissioner finds that an emergency requires immediate
16 action and a court of competent jurisdiction has not stayed the
17 commissioner's action.

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

27 ~~(11)~~(12) (A) A domestic ceding insurer shall take steps to manage its
28 reinsurance recoverables proportionate to its own book of business. A
29 domestic ceding insurer shall notify the commissioner within 30 days after
30 reinsurance recoverables from any single assuming insurer, or group of
31 affiliated assuming insurers, exceeds 50% of the domestic ceding insurer's
32 last reported surplus to policyholders, or after it is determined that
33 reinsurance recoverables from any single assuming insurer, or group of
34 affiliated assuming insurers, is likely to exceed this limit. The notification
35 shall demonstrate that the exposure is safely managed by the domestic
36 ceding insurer.

37 (B) A domestic ceding insurer shall take steps to diversify its
38 reinsurance program. A domestic ceding insurer shall notify the
39 commissioner within 30 days after ceding to any single assuming insurer,
40 or group of affiliated assuming insurers, more than 20% of the ceding
41 insurer's gross written premium in the prior calendar year, or after the
42 domestic ceding insurer has determined that the reinsurance ceded to any
43 single assuming insurer, or group of affiliated assuming insurers, is likely

1 to exceed this limit. The notification shall demonstrate that the exposure is
2 safely managed by the domestic ceding insurer.

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

14 (1) Cash;

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

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

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

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

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

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

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

42 (C) has been determined by either the commissioner or the securities
43 valuation office of the national association of insurance commissioners to

1 meet the standards of financial condition and standing as are considered
2 necessary and appropriate to regulate the quality of financial institutions
3 whose letters of credit will be acceptable to the commissioner.

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

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

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

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

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

19 Sec. 3. K.S.A. 2020 Supp. 40-3302 is hereby amended to read as
20 follows: 40-3302. As used in ~~this act~~ *the insurance holding company act*,
21 unless the context otherwise requires:

22 (a) "Affiliate" of, or person "affiliated" with, a specific person, means
23 a person that directly, or indirectly through one or more intermediaries,
24 controls, is controlled by, or is under common control with, the person
25 specified.

26 (b) "Commissioner of insurance" *or "commissioner"* means the
27 commissioner of insurance, the commissioner's deputies, or the insurance
28 department, as appropriate.

29 (c) "Control" including the terms "controlling," "controlled by" and
30 "under common control with," means the possession, direct or indirect, of
31 the power to direct or cause the direction of the management or policies of
32 a person, whether through the ownership of voting securities, by contract
33 other than a commercial contract for goods or nonmanagement services, or
34 otherwise, unless the power is the result of an official position with or
35 corporate office held by the person. Control shall be presumed to exist if
36 any person, directly or indirectly, owns, controls, holds with the power to
37 vote, or holds proxies representing 10% or more of the voting securities of
38 any other person. This presumption may be rebutted by a showing made in
39 the manner provided by ~~subsection (k) of~~ K.S.A. 40-3305(k), and
40 amendments thereto, that control does not exist in fact. The commissioner
41 of insurance may determine, after a hearing in accordance with the
42 provisions of the Kansas administrative procedure act, that control exists
43 in fact, notwithstanding the absence of a presumption to that effect.

1 (d) "Enterprise risk" means any activity, circumstance, event or series
2 of events involving one or more affiliates of an insurer that, if not
3 remedied promptly, is likely to have a material adverse effect upon the
4 financial condition or liquidity of the insurer or its insurance holding
5 company system as a whole, including, but not limited to, anything that
6 would cause the insurer's risk-based capital to fall into company action
7 level RBC, as such term is defined in either K.S.A. 40-2c01 et seq., and
8 amendments thereto, or K.S.A. 40-2d01 et seq., and amendments thereto,
9 as appropriate, or would cause the insurer to be in hazardous financial
10 condition as set forth in K.S.A. 40-222b, 40-222c and 40-222d, and
11 amendments thereto.

12 (e) *"Group-wide supervisor" means the regulatory official authorized*
13 *to engage in conducting and coordinating group-wide supervision*
14 *activities who is determined or acknowledged by the commissioner under*
15 *K.S.A. 40-3318, and amendments thereto, to have sufficient significant*
16 *contacts with the internationally active insurance group.*

17 (f) "Insurance holding company system" means two or more affiliated
18 persons, one or more of which is an insurer.

19 ~~(g)~~(g) "Insurer" means any corporation, company, association, society,
20 fraternal benefit society, health maintenance organization, nonprofit
21 medical and hospital service corporation, nonprofit dental service
22 corporation, reciprocal exchange, person or partnership writing contracts
23 of insurance, indemnity or suretyship in this state upon any type of risk or
24 loss except lodges, societies, persons or associations transacting business
25 pursuant to the provisions of K.S.A. 40-202, and amendments thereto.

26 (h) *"Internationally active insurance group" means an insurance*
27 *holding company system that: (1) Includes an insurer registered under*
28 *K.S.A. 40-3305, and amendments thereto; and*

29 (2) *meets the following criteria:*

30 (A) *Has premiums written in at least three countries;*

31 (B) *the percentage of gross premiums written outside the United*
32 *States is at least 10% of the insurance holding company system's total*
33 *gross written premiums; and*

34 (C) *based on a three-year rolling average, the total assets of the*
35 *insurance holding company system are at least \$50,000,000,000 or the*
36 *total gross written premiums of the insurance holding company system are*
37 *at least \$10,000,000,000.*

38 ~~(i)~~(i) "Person" means an individual, corporation, a partnership, an
39 association, a joint stock company, a trust, an unincorporated organization,
40 any similar entity or any combination of the foregoing acting in concert.

41 ~~(j)~~(j) "Securityholder" of a specified person means one who owns
42 any security of such person, including common stock, preferred stock, debt
43 obligations, and any other security convertible into or evidencing the right

1 to acquire any of the foregoing.

2 ~~(j)~~(k) "Subsidiary" of a specified person means an affiliate controlled
3 by such person directly, or indirectly, through one or more intermediaries.

4 ~~(j)~~(l) "Voting security" means any security convertible into or
5 evidencing a right to acquire a voting security.

6 Sec. 4. K.S.A. 2020 Supp. 40-3304 is hereby amended to read as
7 follows: 40-3304. (a) (1) No person other than the issuer shall make a
8 tender offer for or a request or invitation for tenders of, or enter into any
9 agreement to exchange securities or, seek to acquire, or acquire, in the
10 open market or otherwise, any voting security of a domestic insurer if,
11 after the consummation thereof, such person would, directly or indirectly,
12 or by conversion or by exercise of any right to acquire, be in control of
13 such insurer, and no person shall enter into an agreement to merge with or
14 otherwise to acquire control of a domestic insurer or any person
15 controlling a domestic insurer unless, at the time any such offer, request, or
16 invitation is made or any such agreement is entered into, or prior to the
17 acquisition of such securities if no offer or agreement is involved, such
18 person has filed with the commissioner of insurance and has sent to such
19 insurer, a statement containing the information required by this section and
20 such offer, request, invitation, agreement or acquisition has been approved
21 by the commissioner of insurance in the manner hereinafter prescribed.
22 The requirements of this section shall not apply to the merger or
23 consolidation of those companies subject to the requirements of K.S.A. 40-
24 507 and 40-1216 ~~to through~~ 40-1225, ~~inclusive~~, and amendments thereto.

25 (2) *For purposes of this section, any controlling person of a domestic*
26 *insurer seeking to divest its controlling interest in the domestic insurer, in*
27 *any manner, shall file with the commissioner, with a copy to the insurer,*
28 *confidential notice of its proposed divestiture at least 30 days prior to the*
29 *cessation of control. The commissioner shall determine those instances in*
30 *which each party seeking to divest or to acquire a controlling interest in*
31 *an insurer shall be required to file for and obtain approval of the*
32 *transaction. The information shall remain confidential until the conclusion*
33 *of the transaction unless the commissioner, in the commissioner's*
34 *discretion, determines that confidential treatment will interfere with*
35 *enforcement of this section. If the statement referred to in paragraph (1) is*
36 *otherwise filed, this paragraph shall not apply.*

37 (3) *With respect to a transaction subject to this section, the acquiring*
38 *person shall also be required to file a preacquisition notification with the*
39 *commissioner, and such preacquisition notification shall contain the*
40 *information in the form and manner prescribed by the commissioner*
41 *through rules and regulations.*

42 (4) For the purposes of this section:

43 (A) A domestic insurer shall include any person controlling a

1 domestic insurer unless such person as determined by the commissioner of
2 insurance is either directly or through its affiliates primarily engaged in
3 business other than the business of insurance.

4 (B) "Person" shall not include any securities broker holding, in the
5 usual and customary broker's function, less than 20% of the voting
6 securities of the insurance company or of any person which controls the
7 insurance company.

8 (b) The statement to be filed with the commissioner of insurance
9 hereunder shall be made under oath or affirmation, shall be accompanied
10 by a nonrefundable filing fee of \$1,000 and shall contain the following
11 information:

12 (1) The name and address of each person by whom or on whose
13 behalf the merger or other acquisition of control referred to in subsection
14 (a) is to be affected, hereinafter called "acquiring party," and:

15 (A) If such person is an individual, such individual's principal
16 occupation, all offices and positions held by such individual during the
17 past five years and any conviction of crimes other than minor traffic
18 violations during the past 10 years;

19 (B) if such person is not an individual, a report of the nature of its
20 business operations during the past five years or for such lesser period as
21 such person and any predecessors thereof shall have been in existence; an
22 informative description of the business intended to be done by such person
23 and such person's subsidiaries; and a list of all individuals who are or who
24 have been selected to become directors or executive officers of such
25 person, or who perform or will perform functions appropriate to such
26 positions. Such list shall include for each such individual the information
27 required by subparagraph (A);

28 (2) the source, nature and amount of the consideration used or to be
29 used in effecting the merger or other acquisition of control, a description
30 of any transaction wherein funds were or are to be obtained for any such
31 purpose including any pledge of the insurer's stock, or the stock of any of
32 its subsidiaries or controlling affiliates, and the identity of persons
33 furnishing such consideration, except that where a source of such
34 consideration is a loan made in the lender's ordinary course of business,
35 the identity of the lender shall remain confidential, if the person filing such
36 statement so requests;

37 (3) fully audited financial information as to the earnings and financial
38 condition of each acquiring party for the preceding five fiscal years of
39 each such acquiring party or for such lesser period as such acquiring party
40 and any predecessors thereof shall have been in existence; and similar
41 unaudited information as of a date not earlier than 90 days prior to the
42 filing of the statement;

43 (4) any plans or proposals ~~which~~ that each acquiring party may have

1 to liquidate such insurer, to sell its assets, merge or consolidate it with any
2 person or to make any other material change to its business, corporate
3 structure or management;

4 (5) the number of shares of any security referred to in subsection (a)
5 ~~which~~ *that* each acquiring party proposes to acquire and the terms of the
6 offer, request, invitation, agreement or acquisition referred to in subsection
7 (a); and a statement ~~as to~~ *regarding* the method ~~by which~~ *utilized to*
8 *determine* the fairness of the proposal ~~was arrived at~~;

9 (6) the amount of each class of any security referred to in subsection
10 (a) ~~which~~ *that* is beneficially owned or concerning which there is a right to
11 acquire beneficial ownership by each acquiring party;

12 (7) a full description of any contracts, arrangements or
13 understandings with respect to any security referred to in subsection (a) in
14 which any acquiring party is involved, including, but not limited to,
15 transfer of any of the securities, joint ventures, loan or option
16 arrangements, puts or calls, guarantees of loans, guarantees against loss or
17 guarantees of profits, division of losses or profits, or the giving or
18 withholding of proxies. Such description shall identify the persons with
19 whom such contracts, arrangements or understandings have been entered
20 into;

21 (8) a description of the purchase of any security referred to in
22 subsection (a) during the 12 calendar months preceding the filing of the
23 statement, by any acquiring party, including the dates of purchase, names
24 of the purchasers; and consideration paid or agreed to be paid therefor;

25 (9) a description of any recommendations to purchase any security
26 referred to in subsection (a) made during the 12 calendar months preceding
27 the filing of the statement, by any acquiring party, or by anyone based
28 upon interviews or at the suggestion of such acquiring party;

29 (10) copies of all tender offers for, requests or invitations for tenders
30 of, exchange offers for and agreements to acquire or exchange any
31 securities referred to in subsection (a); and, if distributed, of additional
32 soliciting material relating thereto;

33 (11) the terms of any agreement, contract or understanding made with
34 or proposed to be made with any broker-dealer as to solicitation of
35 securities referred to in subsection (a) for tender; and the amount of any
36 fees, commissions or other compensation to be paid to broker-dealers with
37 regard thereto;

38 (12) an agreement by the person required to file the statement
39 referred to in subsection (a) that such person will provide the annual
40 report, specified in ~~subsection (1) of~~ K.S.A. 40-3305(l), and amendments
41 thereto, for so long as control exists;

42 (13) an acknowledgment by the person required to file the statement
43 referred to in subsection (a) that the person and all subsidiaries within its

1 control in the insurance holding company system will provide to the
2 commissioner of insurance upon request such information as the
3 commissioner of insurance deems necessary to evaluate enterprise risk to
4 the insurer; and

5 (14) such additional information as the commissioner of insurance
6 may by rule or regulation prescribe as necessary or appropriate for the
7 protection of policyholders of the insurer or in the public interest.

8 If the person required to file the statement referred to in subsection (a)
9 is a partnership, limited partnership, syndicate or other group, the
10 commissioner of insurance may require that the information called for by
11 paragraphs (1) through (14) ~~of subsection (b)~~ shall be given with respect to
12 each partner of such partnership or limited partnership, each member of
13 such syndicate or group; and each person who controls such partner or
14 member. If any such partner, member or person is a corporation or the
15 person required to file the statement referred to in subsection (a) is a
16 corporation, the commissioner of insurance may require that the
17 information called for by paragraphs (1) through (14) ~~of subsection (b)~~
18 shall be given with respect to such corporation, each officer and director of
19 such corporation and each person who is directly or indirectly the
20 beneficial owner of more than 10% of the outstanding voting securities of
21 such corporation.

22 If any material change occurs in the facts set forth in the statement filed
23 with the commissioner of insurance and sent to such insurer pursuant to
24 this section, an amendment setting forth such change, together with copies
25 of all documents and other material relevant to such change, shall be filed
26 with the commissioner of insurance and sent to such insurer within two
27 business days after the person learns of such change.

28 (c) If any offer, request, invitation, agreement or acquisition referred
29 to in subsection (a) is proposed to be made by means of a registration
30 statement under the securities act of 1933 or in circumstances requiring the
31 disclosure of similar information under the securities exchange act of
32 1934, or under a state law requiring similar registration or disclosure, the
33 person required to file the statement referred to in subsection (a) may
34 utilize such documents in furnishing the information called for by that
35 statement.

36 (d) (1) The commissioner of insurance shall approve any merger or
37 other acquisition of control referred to in subsection (a) unless, after a
38 public hearing thereon conducted in accordance with the provisions of the
39 Kansas administrative procedure act, the commissioner of insurance finds
40 that:

41 (A) After the change of control the domestic insurer referred to in
42 subsection (a) would not be able to satisfy the requirements for the
43 issuance of a license to write the line or lines of insurance for which it is

1 presently licensed;

2 (B) the financial condition of any acquiring party is such as might
3 jeopardize the financial stability of the insurer or prejudice the interest of
4 its policyholders;

5 (C) the plans or proposals which the acquiring party has to liquidate
6 the insurer, sell its assets, consolidate or merge it with any person, or to
7 make any other material change in its business, corporate structure or
8 management, are unfair and unreasonable to policyholders of the insurer or
9 are not in the public interest; ~~or~~

10 (D) the competence, experience and integrity of those persons who
11 would control the operation of the insurer are such that it would not be in
12 the interest of policyholders of the insurer or of the public to permit the
13 merger or other acquisition of control; or

14 (E) the acquisition is likely to be hazardous or prejudicial to the
15 insurance-buying public.

16 (2) The public hearing referred to in ~~paragraph (1)~~ of subsection (d)
17 (1) shall be held as soon as practical after the statement required by this
18 subsection (a) is filed, and at least 20 days' notice thereof shall be given by
19 the commissioner of insurance to the person filing the statement. Not less
20 than seven days' notice of such public hearing shall be given by the person
21 filing the statement to the insurer and to such other persons as may be
22 designated by the commissioner of insurance. At such hearing, the person
23 filing the statement, the insurer, any person to whom notice of hearing was
24 sent; and any other person whose interests may be affected thereby shall
25 have the right to present evidence, examine and cross-examine witnesses;
26 and offer oral and written arguments in accordance with the Kansas
27 administrative procedure act. In the absence of intervention, such insurer
28 or person shall have the right to present oral or written statements in
29 accordance with ~~subsection (c)~~ of K.S.A. 77-523(c), and amendments
30 thereto.

31 (3) If the proposed acquisition of control will require the approval of
32 more than one commissioner of insurance, the public hearing referred to in
33 paragraph (2) may be held on a consolidated basis upon request of the
34 person filing the statement referred to in subsection (a). Such person shall
35 file the statement referred to in subsection (a) with the national association
36 of insurance commissioners within five days of making the request for a
37 public hearing. A commissioner of insurance may opt out of a consolidated
38 hearing; and shall provide notice to the applicant of the opt-out within 10
39 days of the receipt of the statement referred to in subsection (a). A hearing
40 conducted on a consolidated basis shall be public and shall be held within
41 the United States before the commissioners of insurance of the states in
42 which the insurers are domiciled. Such commissioners of insurance shall
43 hear and receive evidence. A commissioner of insurance may attend such

1 hearing in person or by telecommunication.

2 (4) As a condition of a change of control of a domestic insurer, any
3 determination by the commissioner of insurance that the person acquiring
4 control of the insurer shall be required to maintain or restore the capital of
5 the insurer to the level required by the laws and regulations of this state
6 shall be made not later than 60 days after the date of notification of the
7 change in control submitted pursuant to subsection (a).

8 (5) The commissioner of insurance may retain at the acquiring
9 person's expense any attorneys, actuaries, accountants and other experts
10 not otherwise a part of the staff of the commissioner of insurance as the
11 commissioner of insurance deems to be reasonably necessary to assist the
12 commissioner of insurance in reviewing the proposed acquisition of
13 control.

14 (e) The provisions of this section shall not apply to: any offer,
15 request, invitation, agreement or acquisition ~~which~~ that the commissioner
16 of insurance by order shall exempt therefrom as:

17 (1) Not having been made or entered into for the purpose and not
18 having the effect of changing or influencing the control of a domestic
19 insurer; or

20 (2) as otherwise not comprehended within the purposes of this
21 section.

22 (f) The following shall be violations of this section:

23 (1) The failure to file any statement, amendment or other material
24 required to be filed pursuant to subsection (a) or (b); or

25 (2) the effectuation or any attempt to effectuate an acquisition of
26 control of, or merger with, a domestic insurer unless the commissioner of
27 insurance has given the requisite approval thereto.

28 (g) The courts of this state are hereby vested with jurisdiction over
29 every securityholder of a domestic insurer and every person not resident,
30 domiciled or authorized to do business in this state who files a statement
31 with the commissioner of insurance under this section and over all actions
32 involving such person arising out of violations of this section. Each such
33 person shall be deemed to have performed acts equivalent to and
34 constituting an appointment by such a person of the commissioner of
35 insurance to be such person's true and lawful attorney upon whom may be
36 served all lawful process in any action, suit or proceeding arising out of
37 violations of this section. Copies of all such lawful process shall be served
38 on the commissioner of insurance and transmitted by registered or certified
39 mail by the commissioner of insurance to such person at such person's last
40 known address.

41 Sec. 5. K.S.A. 2020 Supp. 40-3306 is hereby amended to read as
42 follows: 40-3306. (a) Material transactions by registered insurers with
43 their affiliates shall be subject to the following standards:

1 (1) The terms shall be fair and reasonable;

2 (2) agreements for cost-sharing services and management shall
3 include such provisions as required by rules and regulations adopted by the
4 commissioner of insurance;

5 (3) the charges or fees for services performed shall be reasonable;

6 (4) expenses incurred and payment received with respect to such
7 transactions shall be allocated to the insurer in conformity with the
8 requirements of K.S.A. 40-225, and amendments thereto;

9 (5) the books, accounts and records of each party to all such
10 transactions shall be so maintained as to clearly and accurately disclose the
11 nature and details of the transactions including such accounting
12 information necessary to support the reasonableness of the charges or fees
13 to the respective parties; and

14 (6) the insurer's surplus as regards policyholders following any
15 transactions, dividends or distributions to shareholder affiliates shall be
16 reasonable in relation to the insurer's outstanding liabilities and adequate
17 to its financial needs.

18 (b) The following transactions involving a domestic insurer and any
19 person in such insurer's insurance holding company system, *including*
20 *amendments or modifications of affiliate agreements previously filed*
21 *pursuant to this section*, may not be entered into unless the insurer has
22 notified the commissioner of insurance in writing of such insurer's
23 intention to enter into such transaction at least 30 days prior thereto, or
24 such shorter period as the commissioner of insurance may permit, and the
25 commissioner of insurance has not disapproved such transaction within
26 such period.

27 (1) Sales, purchases, exchanges, loans or extensions of credit,
28 guarantees or investments provided such transactions are equal to or
29 exceed:

30 (A) With respect to nonlife insurers, the lesser of 3% of the insurer's
31 admitted assets or 25% of surplus as regards policyholders; or

32 (B) with respect to life insurers, 3% of the insurer's admitted assets,
33 each as of December 31 immediately preceding.

34 (2) Loans or extensions of credit to any person who is not an affiliate,
35 where the insurer makes such loans or extensions of credit with the
36 agreement or understanding that the proceeds of such transactions, in
37 whole or in substantial part, are to be used to make loans or extensions of
38 credit to, purchase assets of, or make investments in, any affiliate of the
39 insurer making such loans or extensions of credit provided such
40 transactions are equal to or exceed:

41 (A) With respect to nonlife insurers, the lesser of 3% of the insurer's
42 admitted assets or 25% of surplus as regards policyholders;

43 (B) with respect to life insurers, 3% of the insurer's admitted assets,

1 each as of December 31 immediately preceding.

2 (3) Reinsurance agreements or modifications thereto, including:

3 (A) All reinsurance pooling agreements; and

4 (B) agreements in which the reinsurance premium or a change in the
5 insurer's liabilities, or the projected reinsurance premium or a projected
6 change in the insurer's liabilities in any of the next three consecutive years
7 equals or exceeds 5% of the insurer's surplus as regards policyholders, as
8 of December 31 immediately preceding, including those agreements which
9 may require as consideration the transfer of assets from an insurer to a
10 nonaffiliate, if an agreement or understanding exists between the insurer
11 and nonaffiliate that any portion of such assets will be transferred to one or
12 more affiliates of the insurer;

13 (4) all management agreements, service contracts, tax allocation
14 agreements and all cost-sharing arrangements; and

15 (5) any material transactions, specified by rules and regulations,
16 which the commissioner of insurance determines may adversely affect the
17 interests of an insurer's policyholders.

18 Nothing herein contained shall be deemed to authorize or permit any
19 transactions which, in the case of an insurer not a member of the same
20 insurance holding company system, would be otherwise contrary to law.

21 (c) A domestic insurer may not enter into transactions which are part
22 of a plan or series of like transactions with persons within the insurance
23 holding company system if the purpose of those separate transactions is to
24 avoid the threshold amount required under this section and thus avoid the
25 review that would occur otherwise. If the commissioner of insurance
26 determines that such separate transactions were entered into over any 12-
27 month period for such purpose, the commissioner of insurance may
28 exercise authority under K.S.A. 40-3311, and amendments thereto.

29 (d) The commissioner of insurance, in reviewing transactions
30 pursuant to subsection (b), shall consider whether the transactions comply
31 with the standards set forth in subsection (a), and whether such
32 transactions may adversely affect the interests of policyholders.

33 (e) The commissioner of insurance shall be notified within 30 days of
34 any investment of the domestic insurer in any one corporation if the total
35 investment in such corporation by the insurance holding company system
36 exceeds 10% of such corporation's voting securities.

37 (f) A transaction subject to approval by the commissioner of
38 insurance pursuant to K.S.A. 40-3304, and amendments thereto, shall not
39 be subject to the requirements of this section.

40 (g) (1) No insurer subject to registration under K.S.A. 40-3305, and
41 amendments thereto, shall pay any extraordinary dividend or make any
42 other extraordinary distribution to such insurer's shareholders until:

43 (A) ~~Thirty~~30 days after the commissioner of insurance has received

1 notice of the declaration thereof and has not within such period
2 disapproved such payment; or

3 (B) the commissioner of insurance has approved such payment within
4 such 30-day period.

5 (2) (A) For purposes of this section, an extraordinary dividend or
6 distribution includes any dividend or distribution of cash or other property,
7 the fair market value of which, together with that of other dividends or
8 distributions made within the preceding 12 months exceeds the greater of:

9 (i) ~~Ten percent~~10% of such insurer's surplus as regards policyholders
10 as of December 31 immediately preceding; or

11 (ii) the net gain from operations of such insurer, if such insurer is a
12 life insurer, or the net income, if such insurer is not a life insurer, not
13 including realized capital gains for the 12-month period ending December
14 31 immediately preceding, but shall not include pro rata distributions of
15 any class of the insurer's own securities.

16 (B) In determining whether a dividend or distribution is
17 extraordinary, an insurer, other than a life insurer, may carry forward net
18 income from the previous two calendar years that has not already been
19 paid out as dividends. This carry-forward shall be computed by taking the
20 net income from the second and third preceding calendar years, not
21 including realized capital gains, less dividends paid in the second and
22 ~~immediate~~ immediately preceding calendar years.

23 (C) An extraordinary dividend or distribution shall also include any
24 dividend or distribution made or paid out of any funds other than earned
25 surplus arising from the insurer's business, as defined in K.S.A. 40-233,
26 and amendments thereto. The provisions of K.S.A. 40-233, and
27 amendments thereto, shall not be construed so as to prohibit an insurer,
28 subject to registration under K.S.A. 40-3305, and amendments thereto,
29 from making or paying an extraordinary dividend or distribution in
30 accordance with this section.

31 (3) Notwithstanding any other provisions of law, an insurer may
32 declare an extraordinary dividend or distribution which is conditional upon
33 the approval of the commissioner of insurance. No declaration shall confer
34 any rights upon shareholders until:

35 (A) The commissioner of insurance has approved the payment of
36 such dividend or distribution; or

37 (B) the commissioner of insurance has not disapproved such payment
38 within the 30-day period referred to above.

39 (h) (1) Notwithstanding the control of a domestic insurer by any
40 person, the officers and directors of the insurer shall not thereby be
41 relieved of any obligation or liability to which they would otherwise be
42 subject by law, and the insurer shall be managed so as to assure its separate
43 operating identity consistent with this act.

1 (2) Nothing herein shall preclude a domestic insurer from having or
2 sharing a common management or cooperative or joint use of personnel,
3 property or services with one or more other persons under arrangements
4 meeting the standards of K.S.A. 40-3306, and amendments thereto.

5 (i) For purposes of this act, in determining whether an insurer's
6 surplus as regards policyholders is reasonable in relation to the insurer's
7 outstanding liabilities and adequate to such insurer's financial needs, the
8 following factors, among others, shall be considered:

9 (1) The size of the insurer as measured by such insurer's assets,
10 capital and surplus, reserves, premium writings, insurance in force and
11 other appropriate criteria;

12 (2) the extent to which the insurer's business is diversified among the
13 several lines of insurance;

14 (3) the number and size of risks insured in each line of business;

15 (4) the extent of the geographical dispersion of the insurer's insured
16 risks;

17 (5) the nature and extent of the insurer's reinsurance program;

18 (6) the quality, diversification, and liquidity of the insurer's
19 investment portfolio;

20 (7) the recent past and projected future trend in the size and
21 performance of the insurer's surplus as regards policyholders;

22 (8) the surplus as regards policyholders maintained by other
23 comparable insurers;

24 (9) the adequacy of the insurer's reserves;

25 (10) the quality and liquidity of investments in affiliates. The
26 commissioner of insurance may treat any such investment as a disallowed
27 asset for purposes of determining the adequacy of surplus as regards
28 policyholders whenever in the judgment of the commissioner of insurance
29 such investment so warrants; and

30 (11) the quality of the insurer's earnings and the extent to which the
31 reported earnings include extraordinary items.

32 Sec. 6. K.S.A. 2020 Supp. 40-221a, 40-3302, 40-3304 and 40-3306
33 are hereby repealed.

34 Sec. 7. This act shall take effect and be in force from and after its
35 publication in the statute book.