

House Substitute for SENATE BILL No. 78

By Committee on Insurance and Pensions

3-24

1 AN ACT concerning insurance; relating to the regulation of the business
2 thereof; reinsurance of risk; updating the national association of
3 insurance commissioners credit for reinsurance model law; insurance
4 company holding act; codifying the national association of insurance
5 commissioners credit for reinsurance model regulation; updating
6 certain definitions relating to service contracts and surplus lines
7 insurance; interest rates calculations relating to nonforfeiture law for
8 individual deferred annuities; application requirements for certification
9 of utilization review organizations; requirements for out-of-state risk
10 retention groups to do business in state; applications for registration of
11 professional employer organizations; abolishing the automobile club
12 services act; amending K.S.A. 40-22a04, 40-22a06 and 40-4103 and
13 K.S.A. 2020 Supp. 40-201a, 40-221a, 40-246i, 40-4,104, 40-22a05, 40-
14 3302, 40-3304, 40-3306 and 44-1704 and repealing the existing
15 sections; also repealing K.S.A. 40-2405, 40-2501, 40-2502, 40-2503,
16 40-2504, 40-2505, 40-2506, 40-2507, 40-2508, 40-2509, 40-2510, 40-
17 2511, 40-2512 and 40-2513.

18

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

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

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

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

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

1 accredited reinsurer shall:

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

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

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

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

22 (2) If the commissioner determines that the assuming insurer has
23 failed to meet or maintain any of these qualifications, the commissioner
24 may, upon written notice and opportunity for hearing, suspend or revoke
25 the accreditation. Credit shall not be allowed a domestic ceding insurer
26 under this section if the assuming insurer's accreditation has been revoked
27 by the commissioner, or if the reinsurance was ceded while the assuming
28 insurer's accreditation was under suspension by the commissioner.

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

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

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

40 (C) files a properly executed form ar-1, in accordance with the
41 instructions and as prescribed and adopted by the national association of
42 insurance commissioners and the commissioner of insurance, with the
43 commissioner as evidence of its submission to this state's authority to

1 examine its books and records.

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

9 (f) *Credit for reinsurance – reinsurers maintaining trust funds.* (1)
10 Pursuant to K.S.A. 40-221a(a)(4), and amendments thereto, the
11 commissioner shall allow credit for reinsurance ceded by a domestic
12 insurer to an assuming insurer that, as of any date on which statutory
13 financial statement credit for reinsurance is claimed, and thereafter for so
14 long as credit for reinsurance is claimed, maintains a trust fund in an
15 amount prescribed below in a qualified United States financial institution,
16 as defined in K.S.A. 40-221a(c)(2), and amendments thereto, for the
17 payment of the valid claims of its United States-domiciled ceding insurers,
18 their assigns and successors in interest. The assuming insurer shall report
19 annually to the commissioner substantially the same information as that
20 required to be reported on the national association of insurance
21 commissioners annual statement form by licensed insurers, to enable the
22 commissioner to determine the sufficiency of the trust fund.

23 (2) The following requirements apply to the following categories of
24 assuming insurer:

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

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

1 liabilities attributable to reinsurance ceded by United States ceding
2 insurers covered by the trust.

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

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

10 (b) for reinsurance ceded under reinsurance agreements with an
11 inception date on or before December 31, 1992, and not amended or
12 renewed after that date, notwithstanding the other provisions of this
13 section, funds in trust in an amount not less than the respective
14 underwriters' several insurance and reinsurance liabilities attributable to
15 business written in the United States; and

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

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

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

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

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

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

42 (b) maintain a joint trustee surplus of which \$100,000,000 shall be
43 held jointly for the benefit of United States-domiciled ceding insurers of

1 any member of the group; and

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

8 (ii) Within 90 days after the statements are due to be filed with the
9 group's domiciliary regulator, the group shall file with the commissioner
10 an annual certification of each underwriter member's solvency by the
11 member's domiciliary regulators and financial statements, prepared by
12 independent public accountants, of each underwriter member of the group.

13 (3) (A) Credit for reinsurance shall not be granted unless the form of
14 the trust and any amendments to the trust have been approved by either the
15 commissioner of the state where the trust is domiciled or the commissioner
16 of another state who, pursuant to the terms of the trust instrument, has
17 accepted responsibility for regulatory oversight of the trust. The form of
18 the trust and any trust amendments also shall be filed with the
19 commissioner of every state in which the ceding insurer beneficiaries of
20 the trust are domiciled. The trust instrument shall provide that:

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

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

27 (iii) the trust shall be subject to examination as determined by the
28 commissioner;

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

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

38 (B) (i) Notwithstanding any other provisions in the trust instrument, if
39 the trust fund is inadequate because it contains an amount less than the
40 amount required by this subsection or if the grantor of the trust has been
41 declared insolvent or placed into receivership, rehabilitation, liquidation or
42 similar proceedings under the laws of its state or country of domicile, the
43 trustee shall comply with an order of the commissioner with regulatory

1 oversight over the trust or with an order of a court of competent
2 jurisdiction directing the trustee to transfer to the commissioner with
3 regulatory oversight over the trust or other designated receiver all of the
4 assets of the trust fund.

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

9 (iii) If the commissioner with regulatory oversight over the trust
10 determines that the assets of the trust fund or any part thereof are not
11 necessary to satisfy the claims of the United States beneficiaries of the
12 trust, the commissioner with regulatory oversight over the trust shall return
13 the assets, or any part thereof, to the trustee for distribution in accordance
14 with the trust agreement.

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

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

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

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

25 (ii) reserves for losses reported and outstanding;

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

27 (iv) reserves for allocated loss expenses; and

28 (v) unearned premiums.

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

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

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

34 (iii) deposit funds and other liabilities without life or disability
35 contingencies; and

36 (iv) liabilities for policy and contract claims.

37 (5) Assets deposited in trusts established pursuant to K.S.A. 40-
38 221a(a), and amendments thereto, and this subsection shall be valued
39 according to their current fair market value and shall consist only of cash
40 in United States dollars, certificates of deposit issued by a United States
41 financial institution, as defined in K.S.A. 40-221a(c), and amendments
42 thereto, clean, irrevocable, unconditional and "evergreen" letters of credit
43 issued or confirmed by a qualified United States financial institution, as

1 defined in K.S.A. 40-221a(c), and amendments thereto, and investments of
2 the type specified in this subsection, but investments in or issued by an
3 entity controlling, controlled by or under common control with either the
4 grantor or beneficiary of the trust shall not exceed 5% of total investments.
5 Not more than 20% of the total of the investments in the trust may be
6 foreign investments authorized under subparagraph (A)(v), (C), (F)(ii) or
7 (G), and not more than 10% of the total of the investments in the trust may
8 be securities denominated in foreign currencies. For purposes of applying
9 the preceding sentence, a depository receipt denominated in United States
10 dollars and representing rights conferred by a foreign security shall be
11 classified as a foreign investment denominated in a foreign currency. The
12 assets of a trust established to satisfy the requirements of K.S.A. 40-
13 221a(a), and amendments thereto, shall be invested only as follows:

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

17 (i) The United States or by any agency or instrumentality of the
18 United States;

19 (ii) a state of the United States;

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

22 (iv) an agency or instrumentality of a governmental unit referred to in
23 clauses (ii) and (iii) if the obligations shall be by law, statutory or
24 otherwise, payable, as to both principal and interest, from taxes levied or
25 by law required to be levied or from adequate special revenues pledged or
26 otherwise appropriated or by law required to be provided for making these
27 payments, but shall not be obligations eligible for investment under this
28 paragraph if payable solely out of special assessments on properties
29 benefited by local improvements; or

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

35 (B) Obligations that are issued in the United States, or that are dollar
36 denominated and issued in a non-U.S. market, by a solvent United States
37 institution, other than an insurance company, or that are assumed or
38 guaranteed by a solvent United States institution, other than an insurance
39 company and that are not in default as to principal or interest if the
40 obligations:

41 (i) Are rated "A" or higher, or the equivalent, by a securities rating
42 agency recognized by the securities valuation office of the national
43 association of insurance commissioners, or if not so rated, are similar in

1 structure and other material respects to other obligations of the same
2 institution that are so rated;

3 (ii) are insured by at least one authorized insurer, other than the
4 investing insurer or a parent, subsidiary or affiliate of the investing insurer,
5 licensed to insure obligations in this state and, after considering the
6 insurance, are rated "AAA," or the equivalent, by a securities rating
7 agency recognized by the securities valuation office of the national
8 association of insurance commissioners; or

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

11 (C) Obligations issued, assumed or guaranteed by a solvent non-U.S.
12 institution chartered in a country that is a member of the organization for
13 economic cooperation and development or obligations of United States
14 corporations issued in a non-U.S. currency, provided that in either case the
15 obligations are rated "A" or higher, or the equivalent, by a rating agency
16 recognized by the securities valuation office of the national association of
17 insurance commissioners.

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

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

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

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

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

31 (E) As used in this section:

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

36 (a) Represents ownership of one or more promissory notes or
37 certificates of interest or participation in the notes, including any rights
38 designed to assure servicing of, or the receipt or timeliness of receipt by
39 the holders of the notes, certificates, or participation of amounts payable
40 under, the notes, certificates or participation, that:

41 (1) Are directly secured by a first lien on a single parcel of real estate,
42 including stock allocated to a dwelling unit in a residential cooperative
43 housing corporation, upon which is located a dwelling or mixed residential

1 and commercial structure, or on a residential manufactured home, as
2 defined in 42 U.S.C. § 5402(6), whether the manufactured home is
3 considered real or personal property under the laws of the state in which it
4 is located; and

5 (2) were originated by a savings and loan association, savings bank,
6 commercial bank, credit union, insurance company, or similar institution
7 that is supervised and examined by a federal or state housing authority, or
8 by a mortgagee approved by the United States secretary of housing and
9 urban development pursuant to 12 U.S.C. §§ 1709 and 1715b, or, where
10 the notes involve a lien on the manufactured home, by an institution or by
11 a financial institution approved for insurance by the United States
12 secretary of housing and urban development pursuant to 12 U.S.C. § 1703;
13 or

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

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

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

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

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

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

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

42 (b) the equity interests of the institution are registered on a securities
43 exchange regulated by the government of a country that is a member of the

1 organization for economic cooperation and development;

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

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

11 (H) *Investment companies.* (i) Securities of an investment company
12 registered pursuant to the investment company act of 1940, 15 U.S.C. §
13 80a, are permissible investments if the investment company:

14 (a) Invests at least 90% of its assets in the types of securities that
15 qualify as an investment under subparagraph (A), (B) or (C) or invests in
16 securities that are determined by the commissioner to be substantively
17 similar to the types of securities set forth in subparagraph (A), (B) or (C);
18 or

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

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

23 (a) An investment in an investment company qualifying under clause
24 (i)(a) shall not exceed 10% of the assets in the trust and the aggregate
25 amount of investment in qualifying investment companies shall not exceed
26 25% of the assets in the trust; and

27 (b) investments in an investment company qualifying under clause (i)
28 (b) shall not exceed 5% of the assets in the trust and the aggregate amount
29 of investment in qualifying investment companies shall be included when
30 calculating the permissible aggregate value of equity interests pursuant to
31 subparagraph (F)(i);

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

39 (ii) the trust agreement shall provide that the trustee shall be liable for
40 its negligence, willful misconduct or lack of good faith. The failure of the
41 trustee to draw against the letter of credit in circumstances where such
42 draw would be required shall be deemed to be negligence or willful
43 misconduct.

1 (6) A specific security provided to a ceding insurer by an assuming
 2 insurer pursuant to subsection (k) shall be applied, until exhausted, to the
 3 payment of liabilities of the assuming insurer to the ceding insurer holding
 4 the specific security prior to, and as a condition precedent for, presentation
 5 of a claim by the ceding insurer for payment by a trustee of a trust
 6 established by the assuming insurer pursuant to this section.

7 (g) *Credit for reinsurance – certified reinsurers.* (1) Pursuant to
 8 K.S.A. 40-221a(a)(5), and amendments thereto, the commissioner shall
 9 allow credit for reinsurance ceded by a domestic insurer to an assuming
 10 insurer that has been certified as a reinsurer in this state at all times for
 11 which statutory financial statement credit for reinsurance is claimed under
 12 this section. The credit allowed shall be based upon the security held by or
 13 on behalf of the ceding insurer in accordance with a rating assigned to the
 14 certified reinsurer by the commissioner. The security shall be in a form
 15 consistent with the provisions of K.S.A. 40-221a(a)(5) and 40-221a(b),
 16 and amendments thereto, and subsection (k), (l) or (m). The amount of
 17 security required in order for full credit to be allowed shall correspond
 18 with the following requirements:

(A)	Ratings	Security Required
	Secure - 1	0%
	Secure - 2	10%
	Secure - 3	20%
	Secure - 4	50%
	Secure - 5	75%
	Secure - 6	100%

26 (B) Affiliated reinsurance transactions shall receive the same
 27 opportunity for reduced security requirements as all other reinsurance
 28 transactions.

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

33 (D) In order to facilitate the prompt payment of claims, a certified
 34 reinsurer shall not be required to post security for catastrophe recoverables
 35 for a period of one year from the date of the first instance of a liability
 36 reserve entry by the ceding company as a result of a loss from a
 37 catastrophic occurrence as recognized by the commissioner. The one-year
 38 deferral period shall be contingent upon the certified reinsurer continuing
 39 to pay claims in a timely manner. Reinsurance recoverables for only the
 40 following lines of business as reported on the national association of
 41 insurance commissioners annual financial statement related specifically to
 42 the catastrophic occurrence shall be included in the deferral:

43 (i) Line 1: Fire.

- 1 (ii) Line 2: Allied lines.
- 2 (iii) Line 3: Farmowners multiple peril.
- 3 (iv) Line 4: Homeowners multiple peril.
- 4 (v) Line 5: Commercial multiple peril.
- 5 (vi) Line 9: Inland marine.
- 6 (vii) Line 12: Earthquake.
- 7 (viii) Line 21: Auto physical damage.

8 (E) Credit for reinsurance under this section shall apply only to
9 reinsurance contracts entered into or renewed on or after the effective date
10 of the certification of the assuming insurer. Any reinsurance contract
11 entered into prior to the effective date of the certification of the assuming
12 insurer that is subsequently amended after the effective date of the
13 certification of the assuming insurer, or a new reinsurance contract,
14 covering any risk for which collateral was provided previously, shall only
15 be subject to this section with respect to losses incurred and reserves
16 reported from and after the effective date of the amendment or new
17 contract.

18 (F) Nothing in this section shall prohibit the parties to a reinsurance
19 agreement from agreeing to provisions establishing security requirements
20 that exceed the minimum security requirements established for certified
21 reinsurers under this section.

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

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

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

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

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

1 of at least \$250,000,000;

2 (iii) the assuming insurer shall maintain financial strength ratings
 3 from two or more rating agencies deemed acceptable by the commissioner.
 4 These ratings shall be based on interactive communication between the
 5 rating agency and the assuming insurer and shall not be based solely on
 6 publicly available information. These financial strength ratings shall be
 7 one factor used by the commissioner in determining the rating that is
 8 assigned to the assuming insurer. Acceptable rating agencies include the
 9 following:

- 10 (a) Standard & poor's;
- 11 (b) Moody's investors service;
- 12 (c) Fitch ratings;
- 13 (d) a.m. best company; or
- 14 (e) any other nationally recognized statistical rating organization; and
- 15 (iv) the certified reinsurer shall comply with any other requirements
 16 reasonably imposed by the commissioner.

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

24 (i) The certified reinsurer's financial strength rating from an
 25 acceptable rating agency. The maximum rating that a certified reinsurer
 26 may be assigned shall correspond to its financial strength rating as outlined
 27 in the table below. The commissioner shall use the lowest financial
 28 strength rating received from an approved rating agency in establishing the
 29 maximum rating of a certified reinsurer. A failure to obtain or maintain at
 30 least two financial strength ratings from acceptable rating agencies shall
 31 result in loss of eligibility for certification;

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

35 Ratings	Best	S&P	Moody's	Fitch
36 Secure - 1	A++	AAA	Aaa	AAA
37 Secure - 2	A+	AA+, AA-	Aa1, Aa2, Aa3	AA+, AA,
38				AA-
39 Secure - 3	A	A+, A	A1, A2	A+, A
40 Secure - 4	A-	A-	A3	A-
41 Secure - 5	B++, B+	BBB+, BBB	Baa1, Baa2,	BBB+, BBB,
42		BBB-	Baa3	BBB-
43 Vulnerable				

1	- 6	B, B-,	BB+, BB,	Ba1, Ba2,	BB+, BB,
2		C++, C+	BB-, B+,	Ba3, B1,	BB-, B+, B
3			B,		
4		C, C-, D	B, CCC,	B2, B3, Caa,	B-, CCC+,
5			CC,		CC,
6		E, F	C, D, R	Ca, C	CCC-, DD

7 (iii) for certified reinsurers domiciled in the United States, a review of
 8 the most recent applicable national association of insurance commissioners
 9 annual statement blank, either schedule f, for property and casualty
 10 reinsurers, or schedule s, for life and health reinsurers, in accordance with
 11 the instructions and as prescribed and adopted by the national association
 12 of insurance commissioners and the commissioner of insurance;

13 (iv) for certified reinsurers not domiciled in the United States, a
 14 review annually of form cr-f, for property and casualty reinsurers, in
 15 accordance with the instructions and as prescribed and adopted by the
 16 national association of insurance commissioners and the commissioner of
 17 insurance or form cr-s, for life and health reinsurers, in accordance with
 18 the instructions and as prescribed and adopted by the national association
 19 of insurance commissioners and the commissioner of insurance;

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

26 (vi) regulatory actions against the certified reinsurer;

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

29 (viii) for certified reinsurers not domiciled in the United States,
 30 audited financial statements, regulatory filings, and actuarial opinion, as
 31 filed with the non-U.S. jurisdiction supervisor, with a translation into
 32 English. Upon the initial application for certification, the commissioner
 33 will consider audited financial statements for the last two years filed with
 34 its non-U.S. jurisdiction supervisor;

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

38 (x) a certified reinsurer's participation in any solvent scheme of
 39 arrangement, or similar procedure, that involves United States ceding
 40 insurers. The commissioner shall receive prior notice from a certified
 41 reinsurer that proposes participation by the certified reinsurer in a solvent
 42 scheme of arrangement; and

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

1 (E) Based on the analysis conducted under subparagraph (D)(v) of a
2 certified reinsurer's reputation for prompt payment of claims, the
3 commissioner may make appropriate adjustments in the security the
4 certified reinsurer is required to post to protect its liabilities to United
5 States ceding insurers, provided that the commissioner shall, at a
6 minimum, increase the security the certified reinsurer is required to post
7 by one rating level under subparagraph (D)(i) if the commissioner finds
8 that:

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

12 (ii) the aggregate amount of reinsurance recoverables on paid losses
13 that are not in dispute that are overdue by 90 days or more exceeds
14 \$50,000,000.

15 (F) The assuming insurer shall submit a properly executed form cr-1
16 in accordance with the instructions and as prescribed and adopted by the
17 national association of insurance commissioners and the commissioner of
18 insurance as evidence of its submission to the jurisdiction of this state,
19 appointment of the commissioner as an agent for service of process in this
20 state, and agreement to provide security for 100% of the assuming
21 insurer's liabilities attributable to reinsurance ceded by United States
22 ceding insurers if it resists enforcement of a final United States judgment.
23 The commissioner shall not certify any assuming insurer that is domiciled
24 in a jurisdiction that the commissioner has determined does not adequately
25 and promptly enforce final United States judgments or arbitration awards.

26 (G) The certified reinsurer shall agree to meet applicable information
27 filing requirements as determined by the commissioner, both with respect
28 to an initial application for certification and on an ongoing basis. All
29 information submitted by certified reinsurers that is not otherwise public
30 information subject to disclosure shall be exempted from disclosure under
31 the open records act, K.S.A. 45-215, et seq., and amendments thereto, and
32 shall be withheld from public disclosure. The provisions of this
33 subparagraph providing for the confidentiality of public records shall
34 expire on July 1, 2026, unless the legislature reviews and continues such
35 provisions in accordance with K.S.A. 45-229, and amendments thereto.
36 The applicable information filing requirements are, as follows:

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

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

1 (iii) annually, the report of the independent auditor on the financial
2 statements of the insurance enterprise, on the basis described in clause
3 (iv);

4 (iv) annually, the most recent audited financial statements, regulatory
5 filings and actuarial opinion, as filed with the certified reinsurer's
6 supervisor, with a translation into English. Upon the initial certification,
7 audited financial statements for the last two years filed with the certified
8 reinsurer's supervisor;

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

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

15 (vii) any other information that the commissioner may reasonably
16 require.

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

21 (ii) The commissioner shall have the authority to suspend, revoke or
22 otherwise modify a certified reinsurer's certification at any time if the
23 certified reinsurer fails to meet its obligations or security requirements
24 under this section, or if other financial or operating results of the certified
25 reinsurer, or documented significant delays in payment by the certified
26 reinsurer lead the commissioner to reconsider the certified reinsurer's
27 ability or willingness to meet its contractual obligations.

28 (iii) If the rating of a certified reinsurer is upgraded by the
29 commissioner, the certified reinsurer may meet the security requirements
30 applicable to its new rating on a prospective basis, but the commissioner
31 shall require the certified reinsurer to post security under the previously
32 applicable security requirements as to all contracts in force on or before
33 the effective date of the upgraded rating. If the rating of a certified
34 reinsurer is downgraded by the commissioner, the commissioner shall
35 require the certified reinsurer to meet the security requirements applicable
36 to its new rating for all business it has assumed as a certified reinsurer.

37 (iv) Upon revocation of the certification of a certified reinsurer by the
38 commissioner, the assuming insurer shall be required to post security in
39 accordance with subsection (k) in order for the ceding insurer to continue
40 to take credit for reinsurance ceded to the assuming insurer. If funds
41 continue to be held in trust in accordance with subsection (f), the
42 commissioner may allow additional credit equal to the ceding insurer's pro
43 rata share of such funds, discounted to reflect the risk of uncollectibility

1 and anticipated expenses of trust administration. Notwithstanding the
2 change of a certified reinsurer's rating or revocation of its certification, a
3 domestic insurer that has ceded reinsurance to that certified reinsurer may
4 not be denied credit for reinsurance for a period of three months for all
5 reinsurance ceded to that certified reinsurer, unless the reinsurance is
6 found by the commissioner to be at high risk of uncollectibility.

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

14 (B) In order to determine whether the domiciliary jurisdiction of a
15 non-U.S. assuming insurer is eligible to be recognized as a qualified
16 jurisdiction, the commissioner shall evaluate the reinsurance supervisory
17 system of the non-U.S. jurisdiction, both initially and on an ongoing basis,
18 and consider the rights, benefits and the extent of reciprocal recognition
19 afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled
20 in the United States. The commissioner shall determine the appropriate
21 approach for evaluating the qualifications of such jurisdictions, and create
22 and publish a list of jurisdictions whose reinsurers may be approved by the
23 commissioner as eligible for certification. A qualified jurisdiction shall
24 agree to share information and cooperate with the commissioner with
25 respect to all certified reinsurers domiciled within that jurisdiction.
26 Additional factors to be considered in determining whether to recognize a
27 qualified jurisdiction, in the discretion of the commissioner, include, but
28 are not limited to, the following:

- 29 (i) The framework under which the assuming insurer is regulated;
- 30 (ii) the structure and authority of the domiciliary regulator with
31 regard to solvency regulation requirements and financial surveillance;
- 32 (iii) the substance of financial and operating standards for assuming
33 insurers in the domiciliary jurisdiction;
- 34 (iv) the form and substance of financial reports required to be filed or
35 made publicly available by reinsurers in the domiciliary jurisdiction and
36 the accounting principles used;
- 37 (v) the domiciliary regulator's willingness to cooperate with United
38 States regulators in general and the commissioner in particular;
- 39 (vi) the history of performance by assuming insurers in the
40 domiciliary jurisdiction;
- 41 (vii) any documented evidence of substantial problems with the
42 enforcement of final judgments in the domiciliary jurisdiction. A
43 jurisdiction shall not be considered to be a qualified jurisdiction if the

1 commissioner has determined that it does not adequately and promptly
2 enforce final United States judgments or arbitration awards;

3 (viii) any relevant international standards or guidance with respect to
4 mutual recognition of reinsurance supervision adopted by the international
5 association of insurance supervisors or successor organization; and

6 (ix) any other matters deemed relevant by the commissioner.

7 (C) A list of qualified jurisdictions shall be published through the
8 national association of insurance commissioners committee process. The
9 commissioner shall consider this list in determining qualified jurisdictions.
10 If the commissioner approves a jurisdiction as qualified that does not
11 appear on the list of qualified jurisdictions, the commissioner shall provide
12 thoroughly documented justification with respect to the criteria provided
13 under paragraphs (3)(B)(i) through (ix).

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

18 (4) *Recognition of certification issued by a national association of*
19 *insurance commissioners accredited jurisdiction.* (A) If an applicant for
20 certification has been certified as a reinsurer in a national association of
21 insurance commissioners-accredited jurisdiction, the commissioner has the
22 discretion to defer to that jurisdiction's certification and to defer to the
23 rating assigned by that jurisdiction, if the assuming insurer submits a
24 properly executed form cr-1 in accordance with the instructions and as
25 prescribed and adopted by the national association of insurance
26 commissioners and the commissioner of insurance and such additional
27 information as the commissioner requires. The assuming insurer shall be
28 considered to be a certified reinsurer in this state.

29 (B) Any change in the certified reinsurer's status or rating in the other
30 jurisdiction shall apply automatically in this state as of the date it takes
31 effect in the other jurisdiction. The certified reinsurer shall notify the
32 commissioner of any change in its status or rating within 10 days after
33 receiving notice of the change.

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

37 (D) The commissioner may withdraw recognition of the other
38 jurisdiction's certification at any time, with written notice to the certified
39 reinsurer. Unless the commissioner suspends or revokes the certified
40 reinsurer's certification in accordance with subsection (g)(2)(H), the
41 certified reinsurer's certification shall remain in good standing in this state
42 for a period of three months, and such period shall be extended if
43 additional time is necessary to consider the assuming insurer's application

1 for certification in this state.

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

8 (6) The commissioner shall comply with all reporting and notification
9 requirements that may be established by the national association of
10 insurance commissioners with respect to certified reinsurers and qualified
11 jurisdictions.

12 (h) *Credit for reinsurance – reciprocal jurisdictions.* (1) Pursuant to
13 K.S.A. 40-221a(a)(6), and amendments thereto, the commissioner shall
14 allow credit for reinsurance ceded by a domestic insurer to an assuming
15 insurer that is licensed to write reinsurance by, and has its head office or is
16 domiciled in, a reciprocal jurisdiction, and that meets the other
17 requirements of this section.

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

21 (A) A non-U.S. jurisdiction that is subject to an in-force covered
22 agreement with the United States, each within its legal authority, or, in the
23 case of a covered agreement between the United States and the European
24 union, is a member state of the European union. For purposes of this
25 subsection, a "covered agreement" is an agreement entered into pursuant to
26 the dodd-frank wall street reform and consumer protection act, 31 U.S.C.
27 §§ 313 and 314, that is currently in effect or in a period of provisional
28 application and addresses the elimination, under specified conditions, of
29 collateral requirements as a condition for entering into any reinsurance
30 agreement with a ceding insurer domiciled in this state or for allowing the
31 ceding insurer to recognize credit for reinsurance;

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

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

40 (i) Provides that an insurer that has its head office or is domiciled in
41 such qualified jurisdiction shall receive credit for reinsurance ceded to a
42 United States-domiciled assuming insurer in the same manner as credit for
43 reinsurance is received for reinsurance assumed by insurers domiciled in

1 such qualified jurisdiction;

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

7 (iii) recognizes the United States state regulatory approach to group
8 supervision and group capital, by providing written confirmation by a
9 competent regulatory authority, in such qualified jurisdiction, that insurers
10 and insurance groups that are domiciled or maintain their headquarters in
11 this state or another jurisdiction accredited by the national association of
12 insurance commissioners shall be subject only to worldwide prudential
13 insurance group supervision including worldwide group governance,
14 solvency and capital and reporting, as applicable, by the commissioner or
15 the commissioner of the domiciliary state and shall not be subject to group
16 supervision at the level of the worldwide parent undertaking of the
17 insurance or reinsurance group by the qualified jurisdiction; and

18 (iv) provides written confirmation by a competent regulatory
19 authority in such qualified jurisdiction that information regarding insurers
20 and their parent, subsidiary or affiliated entities, if applicable, shall be
21 provided to the commissioner in accordance with a memorandum of
22 understanding or similar document between the commissioner and such
23 qualified jurisdiction, including, but not limited to, the international
24 association of insurance supervisors multilateral memorandum of
25 understanding or other multilateral memoranda of understanding
26 coordinated by the national association of insurance commissioners.

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

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

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

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

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

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

43 (b) a central fund containing a balance of the equivalent of at least

1 \$250,000,000.

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

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

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

11 (iii) if the assuming insurer is domiciled in a reciprocal jurisdiction,
12 as defined in subsection (h)(2)(C), after consultation with the reciprocal
13 jurisdiction and considering any recommendations published through the
14 national association of insurance commissioners committee process, such
15 solvency or capital ratio as the commissioner determines to be an effective
16 measure of solvency.

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

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

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

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

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

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

41 (iv) Each reinsurance agreement shall include a provision requiring
42 the assuming insurer to provide security in an amount equal to 100% of the
43 assuming insurer's liabilities attributable to reinsurance ceded pursuant to

1 that agreement if the assuming insurer resists enforcement of a final
2 judgment that is enforceable under the law of the jurisdiction in which it
3 was obtained or a properly enforceable arbitration award, whether
4 obtained by the ceding insurer or by its legal successor on behalf of its
5 estate, if applicable, assuming insurer resists enforcement of a final
6 judgment that is enforceable under the law of the jurisdiction in which it
7 was obtained or a properly enforceable arbitration award, whether
8 obtained by the ceding insurer or by its legal successor on behalf of its
9 estate, if applicable.

10 (v) The assuming insurer shall confirm that it is not presently
11 participating in any solvent scheme of arrangement that involves this
12 state's ceding insurers and agree to notify the ceding insurer and the
13 commissioner and to provide 100% security to the ceding insurer
14 consistent with the terms of the scheme, if the assuming insurer enters into
15 such a solvent scheme of arrangement. Such security shall be in a form
16 consistent with the provisions of K.S.A. 40-221a(a)(5) and (b), and
17 amendments thereto, and subsections (k), (l) and (m). For purposes of this
18 section, the term "solvent scheme of arrangement" means a foreign or alien
19 statutory or regulatory compromise procedure subject to requisite majority
20 creditor approval and judicial sanction in the assuming insurer's home
21 jurisdiction either to finally commute liabilities of duly noticed classed
22 members or creditors of a solvent debtor, or to reorganize or restructure the
23 debts and obligations of a solvent debtor on a final basis, and that may be
24 subject to judicial recognition and enforcement of the arrangement by a
25 governing authority outside the ceding insurer's home jurisdiction.

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

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

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

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

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

43 (iv) prior to entry into the reinsurance agreement and not more than

1 semi-annually thereafter, information regarding the assuming insurer's
2 assumed reinsurance by the ceding insurer, ceded reinsurance by the
3 assuming insurer, and reinsurance recoverable on paid and unpaid losses
4 by the assuming insurer to allow for the evaluation of the criteria set forth
5 in subparagraph (F).

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

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

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

15 (iii) the aggregate amount of reinsurance recoverable on paid losses
16 that are not in dispute, but are overdue by 90 days or more, exceeds
17 \$50,000,000, or as otherwise specified in a covered agreement.

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

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

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

25 (A) A list of reciprocal jurisdictions is published through the national
26 association of insurance commissioners' committee process. The
27 commissioner's list shall include any reciprocal jurisdiction, as defined
28 under subsections (h)(2)(A) and (B), and shall consider any other
29 reciprocal jurisdiction included on the NAIC list. The commissioner may
30 approve a jurisdiction that does not appear on the national association of
31 insurance commissioners' list of reciprocal jurisdictions as provided by
32 applicable law, regulation, or in accordance with criteria published through
33 the national association of insurance commissioner committee process.

34 (B) The commissioner may remove a jurisdiction from the list of
35 reciprocal jurisdictions upon a determination that the jurisdiction no longer
36 meets one or more of the requirements of a reciprocal jurisdiction, as
37 provided by applicable law, regulation, or in accordance with a process
38 published through the national association of insurance commissioner
39 committee process, except that the commissioner shall not remove from
40 the list a reciprocal jurisdiction, as defined under subsections (h)(2)(A) and
41 (B). Upon removal of a reciprocal jurisdiction from this list credit for
42 reinsurance ceded to an assuming insurer domiciled in that jurisdiction
43 shall be allowed, if otherwise allowed pursuant to K.S.A. 40-221a, and

1 amendments thereto, or this section.

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

6 (A) If a national association of insurance commissioners accredited
7 jurisdiction has determined that the conditions set forth in paragraph (3)
8 have been met, the commissioner has the discretion to defer to that
9 jurisdiction's determination, and add such assuming insurer to the list of
10 assuming insurers to which cessions shall be granted credit in accordance
11 with this subsection. The commissioner may accept financial
12 documentation filed with another national association of insurance
13 commissioners accredited jurisdiction or with the national association of
14 insurance commissioners in satisfaction of the requirements of paragraph
15 (3).

16 (B) When requesting that the commissioner defer to another national
17 association of insurance commissioners accredited jurisdiction's
18 determination, an assuming insurer shall submit a properly executed form
19 rj-1 in accordance with the instructions and as prescribed and adopted by
20 the national association of insurance commissioners and the commissioner
21 of insurance and additional information as the commissioner may require.
22 A state that has received such a request shall notify other states through the
23 national association of insurance commissioners committee process and
24 provide relevant information with respect to the determination of
25 eligibility.

26 (6) If the commissioner determines that an assuming insurer no
27 longer meets one or more of the requirements under this section, the
28 commissioner may revoke or suspend the eligibility of the assuming
29 insurer for recognition under this section.

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

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

42 (7) Before denying statement credit or imposing a requirement to post
43 security with respect to subsection (h)(6) or adopting any similar

1 requirement that will have substantially the same regulatory impact as
2 security, the commissioner shall:

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

6 (B) provide the assuming insurer with 30 days from the initial
7 communication to submit a plan to remedy the defect, and 90 days from
8 the initial communication to remedy the defect, except in exceptional
9 circumstances in which a shorter period is necessary for policyholder and
10 other consumer protection;

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

15 (D) provide a written explanation to the assuming insurer of any of
16 the requirements set out in this subsection.

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

22 (i) *Credit for reinsurance required by law.* Pursuant to K.S.A. 40-
23 221a(a)(7), and amendments thereto, the commissioner shall allow credit
24 for reinsurance ceded by a domestic insurer to an assuming insurer not
25 meeting the requirements of K.S.A. 40-221a(a)(1) through (6), and
26 amendments thereto, but only as to the insurance of risks located in
27 jurisdictions where the reinsurance is required by the applicable law or
28 regulation of that jurisdiction. As used in this section, "jurisdiction" means
29 state, district or territory of the United States and any lawful national
30 government.

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

34 (1) Pursuant to K.S.A. 40-221a(b), and amendments thereto, the
35 commissioner shall allow a reduction from liability for reinsurance ceded
36 by a domestic insurer to an assuming insurer not meeting the requirements
37 of K.S.A. 40-221a(a), and amendments thereto, in an amount not
38 exceeding the liabilities carried by the ceding insurer. The reduction shall
39 be in the amount of funds held by or on behalf of the ceding insurer,
40 including funds held in trust for the exclusive benefit of the ceding insurer,
41 under a reinsurance contract with such assuming insurer as security for the
42 payment of obligations under the reinsurance contract. The security shall
43 be held in the United States subject to withdrawal solely by, and under the

1 exclusive control of, the ceding insurer or, in the case of a trust, held in a
2 qualified United States financial institution, as defined in K.S.A. 40-
3 221a(c)(2), and amendments thereto. This security may be in the form of
4 any of the following:

5 (A) Cash;

6 (B) securities listed by the securities valuation office of the national
7 association of insurance commissioners, including those deemed exempt
8 from filing, as defined by the purposes and procedures manual of the
9 securities valuation office and qualifying as admitted assets;

10 (C) clean, irrevocable, unconditional and "evergreen" letters of credit
11 issued or confirmed by a qualified United States institution, as defined in
12 K.S.A. 40-221a(c), and amendments thereto, effective no later than
13 December 31 of the year for which filing is being made, and in the
14 possession of, or in trust for, the ceding insurer on or before the filing date
15 of its annual statement. Letters of credit meeting applicable standards of
16 issuer acceptability as of the dates of their issuance, or confirmation, shall,
17 notwithstanding the issuing, or confirming, institution's subsequent failure
18 to meet applicable standards of issuer acceptability, continue to be
19 acceptable as security until their expiration, extension, renewal,
20 modification or amendment, whichever occurs first; or

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

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

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

27 (1) As used in this subsection:

28 (A) "Beneficiary" means the entity for whose sole benefit the trust
29 has been established and any successor of the beneficiary by operation of
30 law. If a court of law appoints a successor in interest to the named
31 beneficiary, then the named beneficiary includes and is limited to the court
32 appointed domiciliary receiver, including conservator, rehabilitator or
33 liquidator.

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

38 (C) "Obligations" means:

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

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

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

43 (iv) reserves for allocated reinsured loss expenses and unearned

1 premiums.

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

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

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

10 (D) The trust agreement shall provide that:

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

14 (ii) no other statement or document shall be required to be presented
15 to withdraw assets, except that the beneficiary may be required to
16 acknowledge receipt of withdrawn assets;

17 (iii) it is not subject to any conditions or qualifications outside of the
18 trust agreement; and

19 (iv) it shall not contain references to any other agreements or
20 documents except as provided for in subparagraphs (K) and (L).

21 (E) The trust agreement shall be established for the sole benefit of the
22 beneficiary.

23 (F) The trust agreement shall require the trustee to:

24 (i) Receive assets and hold all assets in a safe place;

25 (ii) determine that all assets are in such form that the beneficiary, or
26 the trustee upon direction by the beneficiary, may whenever necessary
27 negotiate any such assets, without consent or signature from the grantor or
28 any other person or entity;

29 (iii) furnish to the grantor and the beneficiary a statement of all assets
30 in the trust account upon its inception and at intervals no less frequent than
31 the end of each calendar quarter;

32 (iv) notify the grantor and the beneficiary within 10 days, of any
33 deposits to or withdrawals from the trust account;

34 (v) upon written demand of the beneficiary, immediately take any and
35 all steps necessary to transfer absolutely and unequivocally all right, title
36 and interest in the assets held in the trust account to the beneficiary and
37 deliver physical custody of the assets to the beneficiary; and

38 (vi) allow no substitutions or withdrawals of assets from the trust
39 account, except on written instructions from the beneficiary, except that
40 the trustee may, without the consent of but with notice to the beneficiary,
41 upon call or maturity of any trust asset, withdraw such asset upon
42 condition that the proceeds are paid into the trust account.

43 (G) The trust agreement shall provide that at least 30 days, but not

1 more than 45 days, prior to termination of the trust account, written
2 notification of termination shall be delivered by the trustee to the
3 beneficiary.

4 (H) The trust agreement shall be made subject to, and governed by,
5 the laws of the state in which the trust is domiciled.

6 (I) The trust agreement shall prohibit invasion of the trust corpus for
7 the purpose of paying a commission to, or reimbursing the expenses of, the
8 trustee. In order for a letter of credit to qualify as an asset of the trust, the
9 trustee shall have the right and the obligation pursuant to the deed of trust
10 or some other binding agreement, as duly approved by the commissioner,
11 to immediately draw down the full amount of the letter of credit and hold
12 the proceeds in trust for the beneficiaries of the trust if the letter of credit
13 will otherwise expire without being renewed or replaced.

14 (J) The trust agreement shall provide that the trustee shall be liable
15 for its negligence, willful misconduct or lack of good faith. The failure of
16 the trustee to draw against the letter of credit in circumstances where such
17 draw would be required shall be deemed to be negligence or willful
18 misconduct.

19 (K) Notwithstanding other provisions of this section, when a trust
20 agreement is established in conjunction with a reinsurance agreement
21 covering risks other than life, annuities and accident and health, where it is
22 customary practice to provide a trust agreement for a specific purpose, the
23 trust agreement may provide that the ceding insurer shall undertake to use
24 and apply amounts drawn upon the trust account, without diminution
25 because of the insolvency of the ceding insurer or the assuming insurer,
26 only for the following purposes:

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

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

36 (iii) where the ceding insurer has received notification of termination
37 of the trust account and where the assuming insurer's entire obligations
38 under the specific reinsurance agreement remain unliquidated and
39 undischarged 10 days prior to the termination date, to withdraw amounts
40 equal to the obligations and deposit those amounts in a separate account, in
41 the name of the ceding insurer in any qualified United States financial
42 institution, as defined in K.S.A. 40-221a(c)(2), and amendments thereto,
43 apart from its general assets, in trust for such uses and purposes specified

1 in clauses (i) and (ii) as may remain executory after such withdrawal and
2 for any period after the termination date.

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

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

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

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

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

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

33 (M) Either the reinsurance agreement or the trust agreement shall
34 stipulate that assets deposited in the trust account shall be valued
35 according to their current fair market value and shall consist only of cash
36 in United States dollars, certificates of deposit issued by a United States
37 bank and payable in United States dollars, and investments permitted by
38 the insurance code or any combination of the above, provided investments
39 in or issued by an entity controlling, controlled by or under common
40 control with either the grantor or the beneficiary of the trust shall not
41 exceed 5% of total investments. The agreement may further specify the
42 types of investments to be deposited. If the reinsurance agreement covers
43 life, annuities or accident and health risks, then the provisions required by

1 this paragraph shall be included in the reinsurance agreement.

2 (3) *Permitted conditions.* (A) The trust agreement may provide that
3 the trustee may resign upon delivery of a written notice of resignation,
4 effective not less than 90 days after the beneficiary and grantor receive the
5 notice and that the trustee may be removed by the grantor by delivery to
6 the trustee and the beneficiary of a written notice of removal, effective not
7 less than 90 days after the trustee and the beneficiary receive the notice,
8 provided that no such resignation or removal shall be effective until a
9 successor trustee has been duly appointed and approved by the beneficiary
10 and the grantor and all assets in the trust have been duly transferred to the
11 new trustee.

12 (B) The grantor may have the full and unqualified right to vote any
13 shares of stock in the trust account and to receive from time to time
14 payments of any dividends or interest upon any shares of stock or
15 obligations included in the trust account. Any interest or dividends shall be
16 either forwarded promptly upon receipt to the grantor or deposited in a
17 separate account established in the grantor's name.

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

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

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

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

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

38 (ii) require the assuming insurer, prior to depositing assets with the
39 trustee, to execute assignments or endorsements in blank, or to transfer
40 legal title to the trustee of all shares, obligations or any other assets
41 requiring assignments, in order that the ceding insurer, or the trustee upon
42 the direction of the ceding insurer, may whenever necessary negotiate
43 these assets without consent or signature from the assuming insurer or any

1 other entity;

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

4 (iv) stipulate that the assuming insurer and the ceding insurer agree
5 that the assets in the trust account, established pursuant to the provisions of
6 the reinsurance agreement, may be withdrawn by the ceding insurer at any
7 time, notwithstanding any other provisions in the reinsurance agreement,
8 and shall be utilized and applied by the ceding insurer or its successors in
9 interest by operation of law, including without limitation any liquidator,
10 rehabilitator, receiver or conservator of such company, without diminution
11 because of insolvency on the part of the ceding insurer or the assuming
12 insurer, only for the following purposes:

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

14 (1) The assuming insurer's share under the specific reinsurance
15 agreement of premiums returned, but not yet recovered from the assuming
16 insurer, to the owners of policies reinsured under the reinsurance
17 agreement because of cancellations of such policies;

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

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

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

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

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

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

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

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

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

43 (a) Interest at a rate different from that provided in subparagraph (ii)

1 of this paragraph;

2 (b) court or arbitration costs;

3 (c) attorney's fees; and

4 (d) any other reasonable expenses.

5 (5) *Financial reporting.* A trust agreement may be used to reduce any
6 liability for reinsurance ceded to an unauthorized assuming insurer in
7 financial statements required to be filed with this department in
8 compliance with the provisions of this section when established on or
9 before the date of filing of the financial statement of the ceding insurer.
10 Further, the reduction for the existence of an acceptable trust account may
11 be up to the current fair market value of acceptable assets available to be
12 withdrawn from the trust account at that time, but such reduction shall be
13 no greater than the specific obligations under the reinsurance agreement
14 that the trust account was established to secure.

15 (6) The failure of any trust agreement to specifically identify the
16 beneficiary, as defined in paragraph (1), shall not be construed to affect
17 any actions or rights that the commissioner may take or possess pursuant
18 to the provisions of the laws of this state.

19 (1) *Letters of credit qualified under subsection (j)(1).* (1) The letter of
20 credit shall be clean, irrevocable, unconditional and issued or confirmed
21 by a qualified United States financial institution, as defined in K.S.A. 40-
22 221a(c)(1), and amendments thereto. The letter of credit shall contain an
23 issue date and expiration date and shall stipulate that the beneficiary need
24 only draw a sight draft under the letter of credit and present it to obtain
25 funds and that no other document need be presented. The letter of credit
26 also shall indicate that it is not subject to any condition or qualifications
27 outside of the letter of credit. In addition, the letter of credit itself shall not
28 contain reference to any other agreements, documents or entities, except as
29 provided in subsection (m)(8)(A). As used in this subsection, "beneficiary"
30 means the domestic insurer for whose benefit the letter of credit has been
31 established and any successor of the beneficiary by operation of law. If a
32 court of law appoints a successor in interest to the named beneficiary, then
33 the named beneficiary includes and is limited to the court appointed
34 domiciliary receiver, including conservator, rehabilitator or liquidator.

35 (2) The heading of the letter of credit may include a boxed section
36 containing the name of the applicant and other appropriate notations to
37 provide a reference for the letter of credit. The boxed section shall be
38 clearly marked to indicate that such information is for internal
39 identification purposes only.

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

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

6 (5) The letter of credit shall state whether it is subject to and
7 governed by the laws of this state or the uniform customs and practice for
8 documentary credits of the international chamber of commerce publication
9 600, UCP 600, or international standby practices of the international
10 chamber of commerce publication 590, ISP98, or any successor
11 publication, and all drafts drawn thereunder shall be presentable at an
12 office in the United States of a qualified United States financial institution.

13 (6) If the letter of credit is made subject to the uniform customs and
14 practice for documentary credits of the international chamber of commerce
15 publication 600, UCP 600, or international standby practices of the
16 international chamber of commerce publication 590, ISP98, or any
17 successor publication, then the letter of credit shall specifically address
18 and provide for an extension of time to draw against the letter of credit in
19 the event that one or more of the occurrences specified in article 36 of
20 publication 600 or any other successor publication, occur.

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

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

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

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

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

35 (ii) stipulate that the assuming insurer and ceding insurer agree that
36 the letter of credit provided by the assuming insurer pursuant to the
37 provisions of the reinsurance agreement may be drawn upon at any time,
38 notwithstanding any other provisions in the agreement, and shall be
39 utilized by the ceding insurer or its successors in interest only for one or
40 more of the following reasons:

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 insurers, to the owners of policies reinsured under the reinsurance
2 agreement on account of cancellations of such policies;

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

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

9 (b) where the letter of credit will expire without renewal or be
10 reduced or replaced by a letter of credit for a reduced amount and where
11 the assuming insurer's entire obligations under the reinsurance agreement
12 remain unliquidated and undischarged 10 days prior to the termination
13 date, to withdraw amounts equal to the assuming insurer's share of the
14 liabilities, to the extent that the liabilities have not yet been funded by the
15 assuming insurer and exceed the amount of any reduced or replacement
16 letter of credit, and deposit those amounts in a separate account in the
17 name of the ceding insurer in a qualified United States financial institution
18 apart from its general assets, in trust for such uses and purposes specified
19 in paragraph (8)(A)(ii)(a) as may remain after withdrawal and for any
20 period after the termination date; and

21 (iii) all of the provisions of subparagraph (A) shall be applied without
22 diminution because of insolvency on the part of the ceding insurer or
23 assuming insurer.

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

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

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

31 (m) *Other security.* A ceding insurer may take credit for
32 unencumbered funds withheld by the ceding insurer in the United States
33 subject to withdrawal solely by the ceding insurer and under its exclusive
34 control.

35 (n) *Reinsurance contract.* Credit will not be granted, nor an asset or
36 reduction from liability allowed, to a ceding insurer for reinsurance
37 effected with assuming insurers meeting the requirements of subsection
38 (c), (d), (e), (f), (g), (h), or (j) or otherwise in compliance with K.S.A. 40-
39 221a(a), and amendments thereto, after the adoption of this section unless
40 the reinsurance agreement:

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

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

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

12 Sec. 2. K.S.A. 2020 Supp. 40-201a is hereby amended to read as
13 follows: 40-201a. (a) The marketing, sale, offering for sale, issuance,
14 making, proposing to make and administration of a service contract shall
15 not be construed to be the business of insurance and shall be exempt from
16 regulation as insurance pursuant to chapter 40 of the Kansas Statutes
17 Annotated, and amendments thereto.

18 (b) For the purposes of this section:

19 (1) "Service contract" means a contract or agreement for a separate or
20 additional consideration, for any specified duration, to service, repair,
21 replace or maintain all or any part of any structural component, appliance
22 or utility system of any residential property, consumer good or other
23 property; or to indemnify for service, repair, replacement or maintenance
24 for consumer good or other property, due to a defect in materials,
25 workmanship, normal wear and tear; or as a result of power surges or as a
26 result of accidental damage from the handling of any consumer good or
27 other property, with or without additional provision for indemnity
28 payments, when service repair or replacement is not reasonably,
29 commercially or economically feasible. A service contract may also
30 include additional provisions for incidental payment of indemnity under
31 limited circumstances, including, but not limited to, towing, rental and
32 emergency road service.

33 (2) "Service contract" also includes any nonconsumer commercial
34 service contract.

35 (3) ~~"Service contract" does not include an automobile club service as~~
36 ~~defined in K.S.A. 40-2507, and amendments thereto.~~

37 (4) "Service contract" includes, but is not limited to, a contract that
38 offers any one or more of the following services:

39 (A) The repair or replacement of tires or wheels on a motor vehicle
40 damaged as a result of coming into contact with road hazards;

41 (B) the removal of dents, dings or creases on a motor vehicle that can
42 be repaired using the process of paintless dent removal without affecting
43 the existing paint finish and without replacing vehicle body panels,

1 sanding, bonding or painting; and

2 (C) the replacement of a motor vehicle key or key-fob in the event
3 that the key or key-fob becomes inoperable or is lost or stolen.

4 ~~(5)~~(4) "Service contract" does not include an automobile club service
5 contract. As used in this paragraph, "automobile club service contract"
6 means a service contract that provides, in consideration of dues,
7 assessments or periodic payments of money, promises to assist in matters
8 relating to travel and the operation, use and maintenance of an
9 automobile in the supply of features or services or reimbursement thereof,
10 which may include:

11 (A) Such services as community traffic safety services, travel and
12 touring service, theft or reward service, map service, towing service,
13 emergency road service, bail bond service and legal fee reimbursement
14 service in the defense of traffic offenses, none of which enumerated
15 features or services, if provided by the promisor itself, shall be subject to
16 the insurance laws of this state;

17 (B) the purchase of accidental injury and death benefits insurance
18 coverage issued, as provided by applicable statutes, by an insurance
19 company authorized to do business in Kansas; or

20 (C) such other features or services not deemed by the commissioner
21 to constitute the business of insurance.

22 (5) "Road hazard" means a hazard that is encountered while driving a
23 motor vehicle, including, but not be limited to, potholes, rocks, wood
24 debris, metal parts, glass, plastic, curbs or composite scraps.

25 (c) (1) No service contract that is exempt from regulation as
26 insurance pursuant to chapter 40 of the Kansas Statutes Annotated, and
27 amendments thereto, pursuant to this section shall contain any provision
28 for consequential damages unless such consequential damages are caused
29 by the failure of service, repair, replacement or maintenance rendered
30 under the service contract.

31 (2) No service contract that is exempt from regulation as insurance
32 pursuant to chapter 40 of the Kansas Statutes Annotated, and amendments
33 thereto, pursuant to this section shall contain any provision, except as
34 exempt by this section, that would otherwise be covered by a contract of
35 property or liability insurance issued in this state.

36 Sec. 3. K.S.A. 2020 Supp. 40-221a is hereby amended to read as
37 follows: 40-221a. (a) Credit for reinsurance shall be allowed a domestic
38 ceding insurer as either an asset or a reduction from liability on account of
39 reinsurance ceded only when the reinsurer meets the requirements of
40 ~~paragraphs~~ paragraph (1), (2), (3), (4), ~~(5) or~~, (6) or (7). Credit shall be
41 allowed under ~~paragraphs~~ paragraph (1), (2) or (3) ~~of this subsection~~ only
42 as respects cessions of those kinds or classes of business that the assuming
43 insurer is licensed or otherwise permitted to write or assume in its state of

1 domicile or, in the case of a United States branch of an alien assuming
2 insurer, in the state through which it is entered and licensed to transact
3 insurance or reinsurance. Credit shall be allowed only under ~~paragraphs~~
4 *paragraph* (3) or (4) ~~of this subsection~~ if the applicable requirements of
5 paragraph (7) have been satisfied.

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

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

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

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

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

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

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

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

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

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

43 (B) The requirement of subsection (a)(3)(A)(i) does not apply to

1 reinsurance ceded and assumed pursuant to pooling arrangements among
2 insurers in the same holding company system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (c) within 90 days after its financial statements are due to be filed
41 with the group's domiciliary regulator, the group shall provide to the
42 commissioner an annual certification by the group's domiciliary regulator
43 of the solvency of each underwriter member, or if a certification is

1 unavailable, financial statements prepared by independent public
2 accountants of each underwriter member of the group.

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

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

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

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

15 (d) in addition, maintain a joint trusteed surplus of which
16 \$100,000,000 shall be held jointly for the benefit of United States
17 domiciled ceding insurers of any member of the group as additional
18 security for these liabilities; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (i) In order to determine whether the domiciliary jurisdiction of a
33 ~~non-United States~~ *non-U.S.* assuming insurer is eligible to be recognized
34 as a qualified jurisdiction, the commissioner shall evaluate the
35 appropriateness and effectiveness of the reinsurance supervisory system of
36 the jurisdiction, both initially and on an ongoing basis, and consider the
37 rights, benefits and the extent of reciprocal recognition afforded by the
38 ~~non-United States~~ *non-U.S.* jurisdiction to reinsurers licensed and
39 domiciled in the United States. In order to be recognized as a qualified
40 jurisdiction, a jurisdiction must agree to share information and cooperate
41 with the commissioner with respect to all certified reinsurers domiciled
42 within that jurisdiction. A jurisdiction shall not be recognized as a
43 qualified jurisdiction if the commissioner has determined that the

1 jurisdiction does not adequately and promptly enforce final United States
2 judgments and arbitration awards. Additional factors may be considered in
3 the discretion of the commissioner.

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

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

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

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

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

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

33 (ii) If a certified reinsurer maintains a trust to fully secure its
34 obligations subject to subsection (a)(4), and chooses to secure its
35 obligations incurred as a certified reinsurer in the form of a multi-
36 beneficiary trust, the certified reinsurer shall maintain separate trust
37 accounts for its obligations incurred under reinsurance agreements issued
38 or renewed as a certified reinsurer with reduced security as permitted by
39 this subsection or comparable laws of other United States jurisdictions and
40 for its obligations subject to subsection (a)(4). It shall be a condition to the
41 grant of certification under subsection (a)(5) that the certified reinsurer
42 shall have bound itself, by the language of the trust and agreement with the
43 commissioner who has principal regulatory oversight of each such trust

1 account, to fund, upon termination of any such trust account, any
2 deficiency of any other such trust account out of the remaining surplus of
3 the terminated trust account.

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

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

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

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

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

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

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

39 (6) (A) *Credit shall be allowed when the reinsurance is ceded to an*
40 *assuming insurer meeting each of the conditions set forth below.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 **(B)** *The commissioner shall timely create and publish a list of*

1 *reciprocal jurisdictions.*

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

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

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

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

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

40 *(ii) If an assuming insurer's eligibility is revoked, no credit for*
41 *reinsurance may be granted after the effective date of the revocation with*
42 *respect to any reinsurance agreements entered into by the assuming*
43 *insurer, including reinsurance agreements entered into prior to the date of*

1 *revocation, except to the extent that the assuming insurer's obligations*
2 *under the contract are secured in a form acceptable to the commissioner*
3 *and consistent with the provisions of subsection (b).*

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

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

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

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

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

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

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

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

34 *(7)(8) If the assuming insurer is not licensed, accredited or certified to*
35 *transact insurance or reinsurance in this state, the credit permitted by*
36 *subsections (a)(3) and (a)(4) of this section shall not be allowed, unless the*
37 *assuming insurer agrees in the reinsurance agreement to do all of the*
38 *following:*

39 *(A) (i) In the event of the failure of the assuming insurer to perform*
40 *its obligations under the terms of the reinsurance agreement, the assuming*
41 *insurer, at the request of the ceding insurer, will: Submit to the jurisdiction*
42 *of any court of competent jurisdiction in any state of the United States;*
43 *comply with all requirements necessary to give the court jurisdiction; and*

1 abide by the final decision of the court or of any appellate court in the
2 event of an appeal; and

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

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

10 ~~(8)(9)~~ If the assuming insurer does not meet the requirements of
11 subsection (a)(1), (a)(2) ~~or~~, (a)(3) *or* (a)(6), the credit permitted by
12 subsection (a)(4) or (a)(5) shall not be allowed unless the assuming insurer
13 agrees in a trust agreement to the following conditions:

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

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

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

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

37 ~~(9)(10)~~ Credit for reinsurance ceded to a certified reinsurer is limited
38 to reinsurance contracts entered or renewed on or after the effective date of
39 the certification of the assuming insurer by the commissioner.

40 ~~(10)(11)~~ If an accredited or certified reinsurer ceases to meet the
41 requirements of this section for accreditation or certification, the
42 commissioner may suspend or revoke the reinsurer's accreditation or
43 certification.

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

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

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

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

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

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

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

42 (b) An asset or a reduction from liability for the reinsurance ceded by
43 a domestic insurer to an assuming insurer not meeting the requirements of

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

10 (1) Cash;

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

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

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

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

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

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

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

38 (C) has been determined by either the commissioner or the securities
39 valuation office of the national association of insurance commissioners to
40 meet the standards of financial condition and standing as are considered
41 necessary and appropriate to regulate the quality of financial institutions
42 whose letters of credit will be acceptable to the commissioner.

43 (2) For purposes of those provisions of this law specifying those

1 institutions that are eligible to act as a fiduciary of a trust, a "qualified
2 United States financial institution" means an institution that meets all of
3 the following requirements:

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

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

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

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

15 Sec. 4. K.S.A. 2020 Supp. 40-246i is hereby amended to read as
16 follows: 40-246i. The following definitions shall apply to K.S.A. 40-246b
17 through 40-246e, and amendments thereto, and K.S.A. 2020 Supp. 40-
18 246g, and amendments thereto:

19 (a) "Exempt commercial purchaser" means any person purchasing
20 commercial insurance that, at the time of placement, meets the following
21 requirements:

22 (1) The person employs or retains a qualified risk manager to
23 negotiate insurance coverage;

24 (2) the person has paid aggregate nationwide commercial property
25 and casualty insurance premiums in excess of \$100,000 in the immediately
26 preceding 12 months; and

27 (3) the person:

28 (A) Possesses a net worth in excess of \$20,040,000, except that this
29 amount shall be adjusted every five years by ~~rules and regulations of~~
30 *publication in the Kansas register* by the commissioner of insurance to
31 account for the percentage change in the consumer price index;

32 (B) generates annual revenues in excess of \$55,100,000, except that
33 this amount shall be adjusted every five years by ~~rules and regulations of~~
34 *publication in the Kansas register* by the commissioner of insurance to
35 account for the percentage change in the consumer price index;

36 (C) employs more than 500 full-time or full-time-equivalent
37 employees per insured entity or is a member of an affiliated group
38 employing more than 1,000 employees in the aggregate;

39 (D) is a not-for-profit organization or public entity generating annual
40 budgeted expenditures of at least \$33,060,000, except that this amount
41 shall be adjusted every five years by ~~rules and regulations of~~ *publication*
42 *in the Kansas register* by the commissioner of insurance to account for the
43 percentage change in the consumer price index; or

1 (E) is a municipality with a population in excess of 50,000 persons.

2 (b) "Home state": (1) In general, except as provided in subparagraph
3 (2), the term "home state" means, with respect to an insured:

4 (A) The state in which an insured maintains its principal place of
5 business or, in the case of an individual, the individual's principal
6 residence; or

7 (B) if 100% of the insured risk is located out of the state referred to in
8 paragraph (1)(A), the state to which the greatest percentage of the insured's
9 taxable premium for that insurance contract is allocated.

10 (2) ~~Affiliated groups~~—If more than one insured from an affiliated
11 group are named insureds on a single non-admitted insurance contract, the
12 term "home state" means the home state, as determined pursuant to
13 paragraph (1), of the member of the affiliated group that has the largest
14 percentage of premium attributed to it under such insurance contract.

15 (c) "Nonadmitted insurer" means an insurer that is not authorized or
16 admitted to transact the business of insurance under the law of the home
17 state, but does not include a risk retention group as that term is defined in
18 15 U.S.C. § 3901(a)(4), as in effect on July 1, 2015.

19 (d) "Principal place of business" means, with respect to determining
20 the home state of the insured, the state where the insured maintains its
21 headquarters and where the insured's high-level officers direct, control and
22 coordinate the business activities of the insured.

23 (e) "Surplus lines insurance" means insurance procured by a surplus
24 lines licensee from a surplus lines insurer as permitted under the law of the
25 home state. "Surplus lines insurance" shall also mean excess lines
26 insurance as may be defined by applicable state law.

27 ~~(f) This section shall take effect on and after January 1, 2016.~~

28 Sec. 5. K.S.A. 2020 Supp. 40-4,104 is hereby amended to read as
29 follows: 40-4,104. The minimum values as specified in K.S.A. 2020 Supp.
30 40-4,105, 40-4,106, 40-4,107, 40-4,108 and 40-4,110, and amendments
31 thereto, of any paid-up annuity, cash surrender or death benefits available
32 under an annuity contract shall be based upon minimum nonforfeiture
33 amounts as defined in this section ~~and amendments thereto~~.

34 (a) (1) The minimum nonforfeiture amount at any time at or prior to
35 the commencement of any annuity payments shall be equal to an
36 accumulation up to such time at rates of interest as indicated in subsection
37 (b) of the net considerations, as hereinafter defined, paid prior to such
38 time, decreased by the sum of subparagraphs (A) through (D) ~~below~~:

39 (A) Any prior withdrawals from or partial surrenders of the contract
40 accumulated at rates of interest as indicated in subsection (b).

41 (B) An annual contract charge of \$50, accumulated at rates of interest
42 as indicated in subsection (b).

43 (C) Any premium tax paid by the company for the contract,

1 accumulated at rates of interest as indicated in subsection (b).

2 (D) The amount of any indebtedness to the company on the contract,
3 including interest due and accrued.

4 (2) The net considerations for a given contract year used to define the
5 minimum nonforfeiture amount shall be an amount equal to 87.5% of the
6 gross considerations credited to the annuity contract during that contract
7 year.

8 (b) The interest rate used in determining minimum nonforfeiture
9 amounts shall be an annual rate of interest determined as the lesser of three
10 percent per annum and the following, which shall be specified in the
11 annuity contract if the interest rate will be reset:

12 (1) The five-year constant maturity treasury rate reported by the
13 federal reserve as of a date, or average over a period, rounded to the
14 nearest $\frac{1}{20}$ th of one percent, specified in the contract no longer than 15
15 months prior to the annuity contract's issue date or redetermination date of
16 ~~paragraph (4) of subsection (b) of this section and amendments thereto(4);~~

17 (2) reduced by 125 basis points;

18 (3) where the resulting interest rate is not less than ~~one percent~~ 15
19 *basis points or 0.15%*; and

20 (4) the interest rate shall apply for an initial period and may be
21 redetermined for additional periods. The redetermination date, basis and
22 period, if any, shall be stated in the annuity contract. The basis is the date
23 or average over a specified period that produces the value of the five-year
24 constant maturity treasury rate to be used at each redetermination date.

25 (c) During the period or term that an annuity contract provides
26 substantive participation in an equity indexed benefit, such annuity
27 contract may increase the reduction described in ~~paragraph (2) of~~
28 ~~subsection (b) above(2)~~ by up to an additional 100 basis points to reflect
29 the value of the equity index benefit. The present value at the issue date of
30 such annuity contract, and at each redetermination date thereafter, of the
31 additional reduction shall not exceed the market value of the benefit. The
32 commissioner may require a demonstration that the present value of the
33 additional reduction does not exceed the market value of the benefit.
34 Lacking such a demonstration that is acceptable to the commissioner, the
35 commissioner may disallow or limit the additional reduction.

36 (d) The commissioner may adopt rules and regulations to implement
37 the provisions of subsection (c) ~~of this section, and amendments thereto,~~
38 and to provide for further adjustments to the calculation of minimum
39 nonforfeiture amounts for annuity contracts that provide substantive
40 participation in an equity index benefit and for such other annuity
41 contracts that the commissioner determines adjustments are justified.

42 Sec. 6. K.S.A. 40-22a04 is hereby amended to read as follows: 40-
43 22a04. (a) The commissioner shall adopt rules and regulations, ~~with the~~

1 ~~advice of the advisory committee created by K.S.A. 40-22a05~~, establishing
2 standards governing the conduct of utilization review activities performed
3 in this state or affecting residents *or healthcare providers* of this state by
4 utilization review organizations. Unless granted an exemption under
5 K.S.A. 40-22a06, *and amendments thereto*, no utilization review
6 organization may conduct utilization review services in this state or
7 affecting residents of this state ~~on or after May 1, 1995~~, without first
8 obtaining a certificate from the commissioner.

9 (b) The commissioner shall not issue a certificate to a utilization
10 review organization until the applicant:

11 (1) Files a formal application for certification in such form and detail
12 as required by the commissioner and such application has been executed
13 under oath by the chief executive officer, *president or other head official*
14 of the applicant;

15 (2) files with the commissioner a certified copy of its charter or
16 articles of incorporation and bylaws, if any;

17 (3) states the location of the office or offices of the utilization review
18 organization where utilization review affecting residents or health care
19 providers of this state will be principally performed;

20 (4) provides a summary of the qualifications and experience of
21 persons performing utilization review affecting the persons and at the
22 locations identified pursuant to paragraph (3);

23 (5) makes payment of a certification fee of \$100 to the commission;
24 and

25 (6) provides such other information or documentation as the
26 commissioner requires.

27 (c) Certificates issued by the commissioner pursuant to this act shall
28 remain effective until suspended, surrendered or revoked subject to
29 payment of an annual continuation fee of \$50.

30 (d) ~~The commissioner with the advice of the advisory committee~~ may
31 suspend or revoke the certificate or any exemption from certification
32 requirements upon determination that the interests of Kansas insureds are
33 not being properly served under such certificate or exemption. Any such
34 action shall be taken only after a hearing conducted in accordance with the
35 provisions of the Kansas administrative procedure act.

36 Sec. 7. K.S.A. 2020 Supp. 40-22a05 is hereby amended to read as
37 follows: 40-22a05. ~~(a) There is hereby created an advisory committee~~
38 ~~which shall assist the commissioner in the adoption of rules and~~
39 ~~regulations to implement the provisions of this act. The advisory~~
40 ~~committee shall consist of 13 persons appointed by the commissioner as~~
41 ~~follows:~~

42 ~~(1) The commissioner, or the designee of the commissioner, who~~
43 ~~shall be the chairperson;~~

1 ~~(2) one member appointed from the public at large;~~

2 ~~(3) four members who are representatives of utilization review~~
3 ~~organizations; and~~

4 ~~(4) seven members who are representatives of health care providers,~~
5 ~~one of which shall be a representative of a Kansas hospital, and two of~~
6 ~~which shall be persons licensed to practice medicine and surgery in~~
7 ~~Kansas.~~

8 ~~(b) Members of the advisory committee shall be appointed for a term~~
9 ~~of three years, except that the first term of office of two members~~
10 ~~representing utilization review organizations and two members~~
11 ~~representing health care providers shall be for a term of two years, and the~~
12 ~~first term for two members representing health care providers and one~~
13 ~~member representing utilization review organizations shall be for a term of~~
14 ~~one year.~~

15 ~~(c) The advisory committee shall be attached to the insurance~~
16 ~~department, and all administrative functions of the advisory committee~~
17 ~~shall be under the direction and supervision of the commissioner. Within~~
18 ~~available appropriations therefor, members of the advisory committee shall~~
19 ~~be paid subsistence allowances, mileage and other expenses as provided in~~
20 ~~subsection (c) of K.S.A. 75-3223, and amendments thereto.~~

21 ~~(d) Before adopting rules and regulations to carry out the provisions~~
22 ~~of this act, the commissioner with the advice of the advisory committee~~
23 ~~shall:~~

24 ~~(1) Establish utilization review standards which provide for~~
25 ~~uniformity in the procedures for interaction between utilization review~~
26 ~~organizations and health care providers, payors and consumers of health~~
27 ~~care;~~

28 ~~(2) establish utilization review procedures that prevent unnecessary~~
29 ~~and inappropriate disruption to the health care delivery system;~~

30 ~~(3) strive to achieve an efficient process for the certification of~~
31 ~~utilization review organizations; and~~

32 ~~(4) specify the kinds of insurance or types of insurance products to~~
33 ~~which the standards apply and the scope of such application.~~

34 ~~(e) This act~~*The utilization review organization act* shall not apply to:

35 ~~(1)(a)~~ Utilization review of health care services provided to patients
36 under the authority of the Kansas workers compensation act, K.S.A. 44-
37 501 et seq., and amendments thereto;

38 ~~(2)(b)~~ reviews conducted by any insurance company, health
39 maintenance organization, prepaid service plan, group-funded self-insured
40 plan or similar entity solely for the purpose of determining compliance
41 with the specific terms and conditions of an insurance policy, agreement or
42 contract as a part of the normal claim settlement process; or

43 ~~(3)(c)~~ any medical programs operated by the secretary for aging and

1 disability services or any entity to the extent it is acting under contract
2 with the secretary.

3 Sec. 8. K.S.A. 40-22a06 is hereby amended to read as follows: 40-
4 22a06. (a) No certificate shall be required for utilization review activities
5 conducted by or on behalf of:

6 (1) An agency of the federal government;

7 (2) a person, agency or utilization review organization acting on
8 behalf of the federal government, but only to the extent such person,
9 agency or organization is providing services under federal regulation;

10 (3) a federally qualified health maintenance organization authorized
11 to transact business in Kansas—~~which~~ *that* is administering a quality
12 assurance program and performing utilization review activities for its own
13 members as required by 42 U.S.C. § 300e(c)(8) and 42 U.S.C. § 300e(c)
14 (6) respectively;

15 (4) a person employed or used by a utilization review organization
16 authorized to perform utilization review in Kansas, including, but not
17 limited to, individual nurses and other health care providers. This
18 exemption shall not apply with respect to individual persons performing
19 utilization review activities in conjunction with any insurance contract or
20 health benefit plan pursuant to a direct contractual relationship with a
21 health maintenance organization, group-funded self-insurance plan or
22 insurance company;

23 (5) a health benefit plan that is self-insured and qualified under the
24 federal employee retirement income security act of 1974 as amended;

25 (6) hospitals, home health agencies, clinics, private health care
26 provider offices or any other authorized health care facility or entity
27 conducting general, in-house utilization review unless such review is for
28 the purpose of approving or denying payment for hospital or medical
29 services in a particular case; or

30 (7) utilization review organizations conducting utilization review
31 only with respect to mental health, chemical dependency, chiropractic,
32 optometric, podiatric, dental or any other health care service or services
33 other than the practice of medicine and surgery, until utilization review
34 standards governing such treatment or service are incorporated in rules and
35 regulations adopted pursuant to K.S.A. 40-22a04, and amendments
36 thereto.

37 (b) The provisions of K.S.A. 40-22a04(b)(2), (3), (4), (5); *and* (6) and
38 ~~subsection~~ (c), and amendments thereto, shall not apply to:

39 (1) Utilization review organizations accredited by and adhering to the
40 national utilization review standards approved by ~~the American~~
41 ~~accreditation health care commission~~ *URAC, an independent, nonprofit*
42 *accreditation entity*; or

43 (2) such other utilization review organizations—~~as the advisory~~

1 ~~committee may recommend and~~ the commissioner approves.

2 Sec. 9. K.S.A. 2020 Supp. 40-3302 is hereby amended to read as
3 follows: 40-3302. As used in ~~this act~~ *the insurance holding company act*,
4 unless the context otherwise requires:

5 (a) "Affiliate" of, or person "affiliated" with, a specific person, means
6 a person that directly, or indirectly through one or more intermediaries,
7 controls, is controlled by, or is under common control with, the person
8 specified.

9 (b) "Commissioner of insurance" or "*commissioner*" means the
10 commissioner of insurance, the commissioner's deputies, or the insurance
11 department, as appropriate.

12 (c) "Control" including the terms "controlling," "controlled by" and
13 "under common control with," means the possession, direct or indirect, of
14 the power to direct or cause the direction of the management or policies of
15 a person, whether through the ownership of voting securities, by contract
16 other than a commercial contract for goods or nonmanagement services, or
17 otherwise, unless the power is the result of an official position with or
18 corporate office held by the person. Control shall be presumed to exist if
19 any person, directly or indirectly, owns, controls, holds with the power to
20 vote, or holds proxies representing 10% or more of the voting securities of
21 any other person. This presumption may be rebutted by a showing made in
22 the manner provided by ~~subsection (k)~~ of K.S.A. 40-3305(k), and
23 amendments thereto, that control does not exist in fact. The commissioner
24 of insurance may determine, after a hearing in accordance with the
25 provisions of the Kansas administrative procedure act, that control exists
26 in fact, notwithstanding the absence of a presumption to that effect.

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

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

43 (f) "Insurance holding company system" means two or more affiliated

1 persons, one or more of which is an insurer.

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

9 *(h) "Internationally active insurance group" means an insurance*
10 *holding company system that:*

11 *(1) Includes an insurer registered under K.S.A. 40-3305, and*
12 *amendments thereto; and*

13 *(2) meets the following criteria:*

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

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

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

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

25 ~~(h)~~(j) "Securityholder" of a specified person means one who owns
26 any security of such person, including common stock, preferred stock, debt
27 obligations, and any other security convertible into or evidencing the right
28 to acquire any of the foregoing.

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

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

33 Sec. 10. K.S.A. 2020 Supp. 40-3304 is hereby amended to read as
34 follows: 40-3304. (a) (1) No person other than the issuer shall make a
35 tender offer for or a request or invitation for tenders of, or enter into any
36 agreement to exchange securities or, seek to acquire, or acquire, in the
37 open market or otherwise, any voting security of a domestic insurer if,
38 after the consummation thereof, such person would, directly or indirectly,
39 or by conversion or by exercise of any right to acquire, be in control of
40 such insurer, and no person shall enter into an agreement to merge with or
41 otherwise to acquire control of a domestic insurer or any person
42 controlling a domestic insurer unless, at the time any such offer, request, or
43 invitation is made or any such agreement is entered into, or prior to the

1 acquisition of such securities if no offer or agreement is involved, such
2 person has filed with the commissioner of insurance and has sent to such
3 insurer, a statement containing the information required by this section and
4 such offer, request, invitation, agreement or acquisition has been approved
5 by the commissioner of insurance in the manner hereinafter prescribed.
6 The requirements of this section shall not apply to the merger or
7 consolidation of those companies subject to the requirements of K.S.A. 40-
8 507 and 40-1216 ~~to through 40-1225, inclusive~~, and amendments thereto.

9 (2) *For purposes of this section, any controlling person of a domestic*
10 *insurer seeking to divest its controlling interest in the domestic insurer, in*
11 *any manner, shall file with the commissioner, with a copy to the insurer,*
12 *confidential notice of its proposed divestiture at least 30 days prior to the*
13 *cessation of control. The commissioner shall determine those instances in*
14 *which each party seeking to divest or to acquire a controlling interest in*
15 *an insurer shall be required to file for and obtain approval of the*
16 *transaction. The information shall remain confidential until the conclusion*
17 *of the transaction unless the commissioner, in the commissioner's*
18 *discretion, determines that confidential treatment will interfere with*
19 *enforcement of this section. If the statement referred to in paragraph (1) is*
20 *otherwise filed, this paragraph shall not apply.*

21 (3) *With respect to a transaction subject to this section, the acquiring*
22 *person shall also be required to file a preacquisition notification with the*
23 *commissioner; and such preacquisition notification shall contain the*
24 *information in the form and manner prescribed by the commissioner*
25 *through rules and regulations.*

26 (4) For the purposes of this section:

27 (A) A domestic insurer shall include any person controlling a
28 domestic insurer unless such person as determined by the commissioner of
29 insurance is either directly or through its affiliates primarily engaged in
30 business other than the business of insurance.

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

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

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

42 (A) If such person is an individual, such individual's principal
43 occupation, all offices and positions held by such individual during the

1 past five years and any conviction of crimes other than minor traffic
2 violations during the past 10 years;

3 (B) if such person is not an individual, a report of the nature of its
4 business operations during the past five years or for such lesser period as
5 such person and any predecessors thereof shall have been in existence; an
6 informative description of the business intended to be done by such person
7 and such person's subsidiaries; and a list of all individuals who are or who
8 have been selected to become directors or executive officers of such
9 person, or who perform or will perform functions appropriate to such
10 positions. Such list shall include for each such individual the information
11 required by subparagraph (A);

12 (2) the source, nature and amount of the consideration used or to be
13 used in effecting the merger or other acquisition of control, a description
14 of any transaction wherein funds were or are to be obtained for any such
15 purpose including any pledge of the insurer's stock, or the stock of any of
16 its subsidiaries or controlling affiliates, and the identity of persons
17 furnishing such consideration, except that where a source of such
18 consideration is a loan made in the lender's ordinary course of business,
19 the identity of the lender shall remain confidential, if the person filing such
20 statement so requests;

21 (3) fully audited financial information as to the earnings and financial
22 condition of each acquiring party for the preceding five fiscal years of
23 each such acquiring party or for such lesser period as such acquiring party
24 and any predecessors thereof shall have been in existence; and similar
25 unaudited information as of a date not earlier than 90 days prior to the
26 filing of the statement;

27 (4) any plans or proposals ~~which~~ *that* each acquiring party may have
28 to liquidate such insurer, to sell its assets, merge or consolidate it with any
29 person or to make any other material change to its business, corporate
30 structure or management;

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

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

39 (7) a full description of any contracts, arrangements or
40 understandings with respect to any security referred to in subsection (a) in
41 which any acquiring party is involved, including, but not limited to,
42 transfer of any of the securities, joint ventures, loan or option
43 arrangements, puts or calls, guarantees of loans, guarantees against loss or

1 guarantees of profits, division of losses or profits, or the giving or
2 withholding of proxies. Such description shall identify the persons with
3 whom such contracts, arrangements or understandings have been entered
4 into;

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

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

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

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

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

26 (13) an acknowledgment by the person required to file the statement
27 referred to in subsection (a) that the person and all subsidiaries within its
28 control in the insurance holding company system will provide to the
29 commissioner of insurance upon request such information as the
30 commissioner of insurance deems necessary to evaluate enterprise risk to
31 the insurer; and

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

35 If the person required to file the statement referred to in subsection (a)
36 is a partnership, limited partnership, syndicate or other group, the
37 commissioner of insurance may require that the information called for by
38 paragraphs (1) through (14) ~~of subsection (b)~~ shall be given with respect to
39 each partner of such partnership or limited partnership, each member of
40 such syndicate or group; and each person who controls such partner or
41 member. If any such partner, member or person is a corporation or the
42 person required to file the statement referred to in subsection (a) is a
43 corporation, the commissioner of insurance may require that the

1 information called for by paragraphs (1) through (14) ~~of subsection (b)~~
2 shall be given with respect to such corporation, each officer and director of
3 such corporation and each person who is directly or indirectly the
4 beneficial owner of more than 10% of the outstanding voting securities of
5 such corporation.

6 If any material change occurs in the facts set forth in the statement filed
7 with the commissioner of insurance and sent to such insurer pursuant to
8 this section, an amendment setting forth such change, together with copies
9 of all documents and other material relevant to such change, shall be filed
10 with the commissioner of insurance and sent to such insurer within two
11 business days after the person learns of such change.

12 (c) If any offer, request, invitation, agreement or acquisition referred
13 to in subsection (a) is proposed to be made by means of a registration
14 statement under the securities act of 1933 or in circumstances requiring the
15 disclosure of similar information under the securities exchange act of
16 1934, or under a state law requiring similar registration or disclosure, the
17 person required to file the statement referred to in subsection (a) may
18 utilize such documents in furnishing the information called for by that
19 statement.

20 (d) (1) The commissioner of insurance shall approve any merger or
21 other acquisition of control referred to in subsection (a) unless, after a
22 public hearing thereon conducted in accordance with the provisions of the
23 Kansas administrative procedure act, the commissioner of insurance finds
24 that:

25 (A) After the change of control the domestic insurer referred to in
26 subsection (a) would not be able to satisfy the requirements for the
27 issuance of a license to write the line or lines of insurance for which it is
28 presently licensed;

29 (B) the financial condition of any acquiring party is such as might
30 jeopardize the financial stability of the insurer or prejudice the interest of
31 its policyholders;

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

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

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

43 (2) The public hearing referred to in ~~paragraph (1)~~ of subsection (d)

1 (1) shall be held as soon as practical after the statement required by this
2 subsection (a) is filed, and at least 20 days' notice thereof shall be given by
3 the commissioner of insurance to the person filing the statement. Not less
4 than seven days' notice of such public hearing shall be given by the person
5 filing the statement to the insurer and to such other persons as may be
6 designated by the commissioner of insurance. At such hearing, the person
7 filing the statement, the insurer, any person to whom notice of hearing was
8 sent; and any other person whose interests may be affected thereby shall
9 have the right to present evidence, examine and cross-examine witnesses;
10 and offer oral and written arguments in accordance with the Kansas
11 administrative procedure act. In the absence of intervention, such insurer
12 or person shall have the right to present oral or written statements in
13 accordance with ~~subsection (e)~~ of K.S.A. 77-523(c), and amendments
14 thereto.

15 (3) If the proposed acquisition of control will require the approval of
16 more than one commissioner of insurance, the public hearing referred to in
17 paragraph (2) may be held on a consolidated basis upon request of the
18 person filing the statement referred to in subsection (a). Such person shall
19 file the statement referred to in subsection (a) with the national association
20 of insurance commissioners within five days of making the request for a
21 public hearing. A commissioner of insurance may opt out of a consolidated
22 hearing; and shall provide notice to the applicant of the opt-out within 10
23 days of the receipt of the statement referred to in subsection (a). A hearing
24 conducted on a consolidated basis shall be public and shall be held within
25 the United States before the commissioners of insurance of the states in
26 which the insurers are domiciled. Such commissioners of insurance shall
27 hear and receive evidence. A commissioner of insurance may attend such
28 hearing in person or by telecommunication.

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

35 (5) The commissioner of insurance may retain at the acquiring
36 person's expense any attorneys, actuaries, accountants and other experts
37 not otherwise a part of the staff of the commissioner of insurance as the
38 commissioner of insurance deems to be reasonably necessary to assist the
39 commissioner of insurance in reviewing the proposed acquisition of
40 control.

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

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

4 (2) as otherwise not comprehended within the purposes of this
5 section.

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

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

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

12 (g) The courts of this state are hereby vested with jurisdiction over
13 every securityholder of a domestic insurer and every person not resident,
14 domiciled or authorized to do business in this state who files a statement
15 with the commissioner of insurance under this section and over all actions
16 involving such person arising out of violations of this section. Each such
17 person shall be deemed to have performed acts equivalent to and
18 constituting an appointment by such a person of the commissioner of
19 insurance to be such person's true and lawful attorney upon whom may be
20 served all lawful process in any action, suit or proceeding arising out of
21 violations of this section. Copies of all such lawful process shall be served
22 on the commissioner of insurance and transmitted by registered or certified
23 mail by the commissioner of insurance to such person at such person's last
24 known address.

25 Sec. 11. K.S.A. 2020 Supp. 40-3306 is hereby amended to read as
26 follows: 40-3306. (a) Material transactions by registered insurers with
27 their affiliates shall be subject to the following standards:

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

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

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

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

36 (5) the books, accounts and records of each party to all such
37 transactions shall be so maintained as to clearly and accurately disclose the
38 nature and details of the transactions including such accounting
39 information necessary to support the reasonableness of the charges or fees
40 to the respective parties; and

41 (6) the insurer's surplus as regards policyholders following any
42 transactions, dividends or distributions to shareholder affiliates shall be
43 reasonable in relation to the insurer's outstanding liabilities and adequate

1 to its financial needs.

2 (b) The following transactions involving a domestic insurer and any
3 person in such insurer's insurance holding company system, *including*
4 *amendments or modifications of affiliate agreements previously filed*
5 *pursuant to this section*, may not be entered into unless the insurer has
6 notified the commissioner of insurance in writing of such insurer's
7 intention to enter into such transaction at least 30 days prior thereto, or
8 such shorter period as the commissioner of insurance may permit, and the
9 commissioner of insurance has not disapproved such transaction within
10 such period.

11 (1) Sales, purchases, exchanges, loans or extensions of credit,
12 guarantees or investments provided such transactions are equal to or
13 exceed:

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

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

18 (2) Loans or extensions of credit to any person who is not an affiliate,
19 where the insurer makes such loans or extensions of credit with the
20 agreement or understanding that the proceeds of such transactions, in
21 whole or in substantial part, are to be used to make loans or extensions of
22 credit to, purchase assets of, or make investments in, any affiliate of the
23 insurer making such loans or extensions of credit provided such
24 transactions are equal to or exceed:

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

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

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

30 (A) All reinsurance pooling agreements; and

31 (B) agreements in which the reinsurance premium or a change in the
32 insurer's liabilities, or the projected reinsurance premium or a projected
33 change in the insurer's liabilities in any of the next three consecutive years
34 equals or exceeds 5% of the insurer's surplus as regards policyholders, as
35 of December 31 immediately preceding, including those agreements which
36 may require as consideration the transfer of assets from an insurer to a
37 nonaffiliate, if an agreement or understanding exists between the insurer
38 and nonaffiliate that any portion of such assets will be transferred to one or
39 more affiliates of the insurer;

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

42 (5) any material transactions, specified by rules and regulations,
43 which the commissioner of insurance determines may adversely affect the

1 interests of an insurer's policyholders.

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

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

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

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

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

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

27 (A) ~~Thirty~~30 days after the commissioner of insurance has received
28 notice of the declaration thereof and has not within such period
29 disapproved such payment; or

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

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

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

38 (ii) the net gain from operations of such insurer, if such insurer is a
39 life insurer, or the net income, if such insurer is not a life insurer, not
40 including realized capital gains for the 12-month period ending December
41 31 immediately preceding, but shall not include pro rata distributions of
42 any class of the insurer's own securities.

43 (B) In determining whether a dividend or distribution is

1 extraordinary, an insurer, other than a life insurer, may carry forward net
2 income from the previous two calendar years that has not already been
3 paid out as dividends. This carry-forward shall be computed by taking the
4 net income from the second and third preceding calendar years, not
5 including realized capital gains, less dividends paid in the second and
6 ~~immediate~~ *immediately* preceding calendar years.

7 (C) An extraordinary dividend or distribution shall also include any
8 dividend or distribution made or paid out of any funds other than earned
9 surplus arising from the insurer's business, as defined in K.S.A. 40-233,
10 and amendments thereto. The provisions of K.S.A. 40-233, and
11 amendments thereto, shall not be construed so as to prohibit an insurer,
12 subject to registration under K.S.A. 40-3305, and amendments thereto,
13 from making or paying an extraordinary dividend or distribution in
14 accordance with this section.

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

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

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

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

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

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

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

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

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

42 (4) the extent of the geographical dispersion of the insurer's insured
43 risks;

- 1 (5) the nature and extent of the insurer's reinsurance program;
 2 (6) the quality, diversification; and liquidity of the insurer's
 3 investment portfolio;
 4 (7) the recent past and projected future trend in the size and
 5 performance of the insurer's surplus as regards policyholders;
 6 (8) the surplus as regards policyholders maintained by other
 7 comparable insurers;
 8 (9) the adequacy of the insurer's reserves;
 9 (10) the quality and liquidity of investments in affiliates. The
 10 commissioner of insurance may treat any such investment as a disallowed
 11 asset for purposes of determining the adequacy of surplus as regards
 12 policyholders whenever in the judgment of the commissioner of insurance
 13 such investment so warrants; and

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

16 Sec. 12. K.S.A. 40-4103 is hereby amended to read as follows: 40-
 17 4103. Risk retention groups chartered in states other than this state seeking
 18 to do business as a risk retention group in this state shall observe and abide
 19 by the laws of this state as follows:

20 (a) *Notice of operations and designation of commissioner as agent.*
 21 Before offering insurance in this state, a risk retention group shall submit to
 22 the commissioner:

23 (1) A statement identifying the state or states in which the risk
 24 retention group is chartered and licensed as a liability insurance company,
 25 date of chartering, its principal place of business and such other
 26 information including information on its membership, as the commissioner
 27 of this state may require to verify that the risk retention group is qualified
 28 under ~~subsection (k)~~ of K.S.A. 40-4101(k), and amendments thereto;

29 (2) a copy of its plan of operations or a feasibility study and revisions
 30 of such plan or study submitted to its state of domicile; ~~but~~, *except that* the
 31 provision relating to the submission of a plan of operation or a feasibility
 32 study shall not apply with respect to any line or classification of liability
 33 insurance ~~which that~~:

34 (A) Was defined in the product liability risk retention act of 1981
 35 before October 27, 1986; and

36 (B) was offered before such date by any risk retention group ~~which~~
 37 *that* had been chartered and operating for not less than three years before
 38 such date;

39 (3) a statement of registration ~~which that~~ designates the
 40 commissioner as its agent for the purpose of receiving service of legal
 41 documents or process; and

42 (4) a notification fee in the amount of \$250.

43 (b) *Financial condition.* Any risk retention group doing business in

1 this state shall submit to the commissioner:

2 (1) A copy of the group's financial statement submitted to its state of
3 domicile, ~~which shall be certified by an independent public accountant and~~
4 ~~contain~~ *that contains* a statement of opinion on loss and loss adjustment
5 expense reserves made by a member of the American academy of actuaries
6 or a qualified loss reserve specialist (under criteria established by the
7 national association of insurance commissioners);

8 (2) a copy of each examination of the risk retention group as certified
9 by the commissioner or public official conducting the examination;

10 (3) upon request by the commissioner, a copy of any audit performed
11 with respect to the risk retention group; and

12 (4) such information as may be required to verify its continuing
13 qualification as a risk retention group under ~~subsection (k)~~ of K.S.A. 40-
14 4101(k), and amendments thereto.

15 (c) *Taxation.* (1) All premiums paid for coverages within this state to
16 risk retention groups chartered outside this state shall be subject to taxation
17 at the same rate and subject to the same interest, fines and penalties for
18 nonpayment as that provided by K.S.A. 40-246c, and amendments thereto.
19 Risk retention groups chartered or licensed in this state shall be taxed in
20 accordance with K.S.A. 40-252, and amendments thereto.

21 (2) To the extent agents or brokers are utilized, they shall report and
22 pay the taxes for the premiums for risks ~~which~~ *that* they have placed with
23 or on behalf of a risk retention group not chartered in this state.

24 (3) To the extent agents or brokers are not utilized or fail to pay the
25 tax, each risk retention group shall pay the tax for risks insured within the
26 state. ~~Further,~~ Each risk retention group shall report all premiums paid to it
27 for risks insured within the state.

28 (d) *Compliance with unfair claims settlement practices law.* Any risk
29 retention group, its agents and representatives, shall comply with
30 ~~subsection (9)~~ of K.S.A. 40-2404(9), and amendments thereto.

31 (e) *Deceptive, false or fraudulent practices.* Any risk retention group
32 shall comply with the laws of this state regarding deceptive, false or
33 fraudulent acts or practices. ~~However,~~ *except that* if the commissioner
34 seeks an injunction regarding such conduct, the injunction shall be
35 obtained from a court of competent jurisdiction.

36 (f) *Examination regarding financial condition.* Any risk retention
37 group shall submit to an examination in accordance with K.S.A. 40-222
38 and 40-223, and amendments thereto, by the commissioner to determine
39 its financial condition if the commissioner of the jurisdiction in which the
40 group is chartered has not initiated an examination or does not initiate an
41 examination within 60 days after a request by the commissioner of this
42 state.

43 (g) *Notice to purchasers.* Any policy issued by a risk retention group

1 shall contain in 10 point type on the front page and the declaration page,
2 the following notice:

3 NOTICE

4 This policy is issued by your risk retention group. Your risk retention
5 group may not be subject to all of the insurance laws and regulations of
6 your state. State insurance insolvency guaranty funds are not available for
7 your risk retention group.

8 (h) *Prohibited acts regarding solicitation or sale.* The following acts
9 by a risk retention group are hereby prohibited:

10 (1) The solicitation or sale of insurance by a risk retention group to
11 any person who is not eligible for membership in such group; and

12 (2) the solicitation or sale of insurance by, or operation of, a risk
13 retention group that is in a hazardous financial condition or is financially
14 impaired.

15 (i) *Prohibition on ownership by an insurance company.* No risk
16 retention group shall be allowed to do business in this state if an insurance
17 company is directly or indirectly a retention group all of whose members
18 are insurance companies.

19 (j) *Prohibited coverage.* No risk retention group may offer insurance
20 policy coverage prohibited by the laws of this state or declared unlawful
21 by the supreme court of the state of Kansas.

22 (k) *Delinquency proceedings.* A risk retention group not chartered in
23 this state and doing business in this state must comply with a lawful order
24 issued in a voluntary dissolution proceeding or in a delinquency
25 proceeding commenced by a state insurance commissioner if there has
26 been a finding of financial impairment after an examination under
27 subsection (f) of this section.

28 Sec. 13. K.S.A. 2020 Supp. 44-1704 is hereby amended to read as
29 follows: 44-1704. (a) A person engaged in the business of providing
30 professional employer services pursuant to co-employment relationships in
31 which all or a majority of the employees of a client are covered employees
32 shall be registered pursuant to this section.

33 (b) A person who is not registered pursuant to this section shall not
34 offer or provide professional employer services in this state, and shall not
35 use the names PEO, professional employer organization, staff leasing
36 company, employee leasing company, administrative employer or any
37 other name or title representing professional employer services.

38 (c) Each applicant for registration shall submit an application to the
39 commissioner in such form and manner as prescribed by the
40 commissioner. The application shall contain the following information:

41 (1) The name or names under which the professional employer
42 organization conducts business;

43 (2) the address of the principal place of business of the professional

1 employer organization, and the address of each office the professional
2 employer organization maintains in this state;

3 (3) the professional employer organization's taxpayer or employer
4 identification number;

5 (4) a list, by jurisdiction, of each name under which the professional
6 employer organization has operated in the preceding five years, including
7 any alternative names, names of predecessors and, if known, successor
8 business entities;

9 (5) a statement of ownership, ~~which~~ *that* shall include the name and
10 evidence of the business experience of any person that, individually, or
11 acting in concert with one or more other persons, owns or controls,
12 directly or indirectly, 15% or more of the equity interest of the professional
13 employer organization;

14 (6) a statement of management, ~~which~~ *that* shall include the name and
15 evidence of the business experience of any individual who serves as
16 president, chief executive officer or otherwise has the authority to act as
17 senior executive officer of the professional employer organization; and

18 (7) a financial statement setting forth the financial condition of the
19 professional employer organization or professional employer group, ~~which~~
20 *that* shall comply with the provisions of subsection (h).

21 (d) (1) Each professional employer organization operating within this
22 state as of the effective date of this act shall complete its initial registration
23 not later than 60 days after the effective date of this act. Such initial
24 registration shall be valid until 60 days from the end of the professional
25 employer organization's first fiscal year that is more than one year after the
26 effective date of this act.

27 (2) Each professional employer organization not operating within this
28 state as of the effective date of this act shall complete its initial registration
29 prior to initiating operations within this state. If a professional employer
30 organization not registered in this state becomes aware that an existing
31 client, not based in this state, has employees and operations in this state,
32 the professional employer organization shall either decline to provide
33 professional employer services for those employees, or notify the
34 commissioner within five business days of the professional employer
35 organization's knowledge of this fact and file a limited registration
36 application pursuant to subsection (g), or a full registration if there are
37 more than 50 covered employees employed by such client. The
38 commissioner may issue an interim operating permit for the period of time
39 the application is pending if the professional employer organization is
40 currently registered or licensed by another state; and the commissioner
41 determines it is in the best interests of the potential covered employees.

42 (e) *A registrant's application shall automatically expire 120 days*
43 *after the end of the registrant's fiscal year. Within-60 120 days after the*

1 end of a registrant's fiscal year, such registrant shall renew its registration
2 by notifying the commissioner of any changes in the information provided
3 in such registrant's most recent registration or renewal. A registrant's
4 existing registration shall remain in effect for the period of time the
5 renewal application is pending.

6 (f) Professional employer organizations in a professional employer
7 group may satisfy any reporting and financial requirements of this section
8 on a combined or consolidated basis, provided that each member of the
9 professional employer group guarantees the financial capacity obligations
10 required by K.S.A. 2020 Supp. 44-1706, and amendments thereto, of each
11 other member of the professional employer group. In the case of a
12 professional employer group that submits a combined or consolidated
13 audited financial statement, including entities that are not professional
14 employer organizations or that are not in the professional employer group,
15 the controlling entity of the professional employer group under the
16 consolidated or combined statement must guarantee the obligations of the
17 professional employer organizations in the professional employer group.

18 (g) (1) A professional employer organization is eligible for a limited
19 registration if such professional employer organization:

20 (A) Submits a written request for limited registration in such form
21 and manner as prescribed by the commissioner;

22 (B) is domiciled outside this state; and is licensed or registered as a
23 professional employer organization in another state;

24 (C) does not maintain an office in this state; or directly solicit clients
25 located or domiciled within this state; and

26 (D) does not have more than 50 covered employees employed or
27 domiciled in this state on any given day.

28 (2) A limited registration is valid for one year; and may be renewed
29 *thereafter*.

30 (3) A professional employer organization requesting limited
31 registration under this subsection shall provide the commissioner with
32 such information and documentation as required by the commissioner to
33 show that the professional employer organization qualifies for a limited
34 registration.

35 (4) The provisions of K.S.A. 2020 Supp. 44-1706, and amendments
36 thereto, shall not apply to applicants for limited registration.

37 (h) At the time of initial registration, the applicant shall submit the
38 most recent audit of the applicant or such applicant's parent holding
39 company, ~~which~~. *The most recent* audit shall not be older than 13 months.
40 Thereafter, a professional employer organization or professional employer
41 group shall file on an annual basis, within ~~60~~ 120 days after the end of the
42 professional employer organization's or parent holding company's fiscal
43 year, a succeeding audit *and renewal registration application*. An applicant

1 may apply to the commissioner for an extension of time to submit such
2 audit, but any such request shall be accompanied by a letter from the
3 auditor stating the reasons for the delay and the anticipated audit
4 completion date. For the initial application, if the closing date of the
5 audited financial statements required by this section is older than three
6 months from the date of the application, the application also shall include
7 updated, ~~though~~ unaudited, financial statements for the most recent
8 quarter. The financial statement shall be prepared in accordance with
9 generally accepted accounting principles and audited by an independent
10 certified public accountant licensed to practice in the jurisdiction in which
11 such accountant is located; and shall be without qualification as to the
12 going concern status of the professional employer organization. A
13 professional employer group may submit combined or consolidated
14 audited financial statements to meet the requirements of this section. A
15 professional employer organization that has not had sufficient operating
16 history to have audited financial statements based upon at least 12 months
17 of operating history shall meet the financial capacity requirements of
18 subsection (f) and present financial statements reviewed by a certified
19 public accountant.

20 (i) The department shall maintain a list of professional employer
21 organizations registered under this section, and such list shall be readily
22 available to the public by electronic or other means.

23 (j) The commissioner, to the extent ~~practical~~ *feasible*, shall permit the
24 acceptance of electronic filings, including applications, documents, reports
25 and other filings required by the commissioner under this section. The
26 commissioner may provide for the acceptance of electronic filings and
27 other assurance documents by an independent and qualified entity
28 approved by the commissioner that provides satisfactory assurance of
29 compliance acceptable to the commissioner consistent with, or in lieu of,
30 the requirements of this section and K.S.A. 2020 Supp. 44-1706, and
31 amendments thereto. The commissioner shall permit a professional
32 employer organization to authorize such entity approved by the
33 commissioner to act on the professional employer organization's behalf,
34 *including electronic filings of information and payment of registration fees*
35 in complying with the registration requirements of this section, ~~including~~
36 ~~electronic filings of information and payment of registration fees~~. Use of
37 such an approved entity shall be optional and not mandatory for a
38 registrant. Nothing in this subsection shall limit or change the
39 commissioner's authority to register or terminate registration of a
40 professional employer organization; or to investigate or enforce any
41 provision of K.S.A. 2020 Supp. 44-1701 through 44-1711, and
42 amendments thereto.

43 Sec. 14. K.S.A. 40-22a04, 40-22a06, 40-2405, 40-2501, 40-2502, 40-

1 2503, 40-2504, 40-2505, 40-2506, 40-2507, 40-2508, 40-2509, 40-2510,
2 40-2511, 40-2512, 40-2513 and 40-4103 and K.S.A. 2020 Supp. 40-201a,
3 40-221a, 40-246i, 40-4,104, 40-22a05, 40-3302, 40-3304, 40-3306 and 44-
4 1704 are hereby repealed.

5 Sec. 15. This act shall take effect and be in force from and after its
6 publication in the statute book.