House Substitute for SENATE BILL No. 78

AN ACT concerning insurance; relating to the regulation of the business thereof; reinsurance of risk; updating the national association of insurance commissioners credit for reinsurance model law; insurance company holding act; codifying the national association of insurance commissioners credit for reinsurance model regulation; updating certain definitions relating to service contracts and surplus lines insurance; interest rates calculations relating to nonforfeiture law for individual deferred annuities; application requirements for certification of utilization review organizations; requirements for out-of-state risk retention groups to do business in state; applications for registration of professional employer organizations; abolishing the automobile club services act; increasing minimum coverage requirements with regard to the healthcare stabilization fund; changing membership of the board of governors; increasing time for service of process thereon; updating the version of risk-based capital instructions in effect; amending K.S.A. 40-22a04, 40-22a06, 40-3409 and 40-4103 and K.S.A. 2020 Supp. 40-201a, 40-221a, 40-246i, 40-2c01, 40-4,104, 40-22a05, 40-3302, 40-3304, 40-3306, 40-3402, 40-3403, 40-3408, 40-3414, 40-3424 and 44-1704 and repealing the existing sections; also repealing K.S.A. 40-2405, 40-2501, 40-2502, 40-2503, 40-2504, 40-2505, 40-2506, 40-2507, 40-2508, 40-2509, 40-2510, 40-2511, 40-2512 and 40-2513.

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

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

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

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

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

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

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

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

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

(2) If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may, upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked

by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

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

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

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

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

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

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

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

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

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

reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

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

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

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

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

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

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

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

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

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

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

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

(ii) Within 90 days after the statements are due to be filed with the

group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators and financial statements, prepared by independent public accountants, of each underwriter member of the group.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) reserves for losses reported and outstanding;

(iii) reserves for losses incurred but not reported;

(iv) reserves for allocated loss expenses; and

(v) unearned premiums.

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

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

(ii) aggregate reserves for accident and health policies;

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

(iv) liabilities for policy and contract claims.

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

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

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

(ii) a state of the United States;

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

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

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

(B) Obligations that are issued in the United States, or that are

dollar denominated and issued in a non-U.S. market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company and that are not in default as to principal or interest if the obligations:

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

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

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

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

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

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

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

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

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

(E) As used in this section:

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

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

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

(2) were originated by a savings and loan association, savings

bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the United States secretary of housing and urban development pursuant to 12 U.S.C. §§ 1709 and 1715b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the United States secretary of housing and urban development pursuant to 12 U.S.C. § 1703; or

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

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

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

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

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

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

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

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

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

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

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

(a) Invests at least 90% of its assets in the types of securities that qualify as an investment under subparagraph (A), (B) or (C) or invests in securities that are determined by the commissioner to be

substantively similar to the types of securities set forth in subparagraph (A), (B) or (C); or

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

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

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

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

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

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

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

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

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

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

against the ceding insurer.

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

(i) Line 1: Fire.

(ii) Line 2: Allied lines.

(iii) Line 3: Farmowners multiple peril.

(iv) Line 4: Homeowners multiple peril.

(v) Line 5: Commercial multiple peril.

(vi) Line 9: Inland marine.

(vii) Line 12: Earthquake.

(viii) Line 21: Auto physical damage.

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

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

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

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

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

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

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

(iii) the assuming insurer shall maintain financial strength ratings

from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings shall be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(a) Standard & poor's;

(b) Moody's investors service;

(c) Fitch ratings;

(d) a.m. best company; or

(e) any other nationally recognized statistical rating organization; and

(iv) the certified reinsurer shall comply with any other requirements reasonably imposed by the commissioner.

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

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

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

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

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

(iv) for certified reinsurers not domiciled in the United States, a review annually of form cr-f, for property and casualty reinsurers, in

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

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

(vi) regulatory actions against the certified reinsurer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The framework under which the assuming insurer is regulated;

(ii) the structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;

(iii) the substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;

(iv) the form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used;

(v) the domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular;

(vi) the history of performance by assuming insurers in the domiciliary jurisdiction;

(vii) any documented evidence of substantial problems with the enforcement of final judgments in the domiciliary jurisdiction. A jurisdiction shall not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards;

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

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

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

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

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

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

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

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

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

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

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

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

(A) A non-U.S. jurisdiction that is subject to an in-force covered

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

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

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

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

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

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

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

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

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

(B) The assuming insurer shall have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual

date otherwise statutorily required to be reported to the reciprocal jurisdiction, and confirmed as set forth in paragraph (3)(G) according to the methodology of its domiciliary jurisdiction, in the following amounts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective

date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with subsection (j).

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

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

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

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

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

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

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

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

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

(1) Pursuant to K.S.A. 40-221a(b), and amendments thereto, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of K.S.A. 40-221a(a), and amendments thereto, in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution, as defined in K.S.A. 40-221a(c)(2), and

amendments thereto. This security may be in the form of any of the following:

(A) Cash;

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

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

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

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

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

(1) As used in this subsection:

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

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

(C) "Obligations" means:

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

(ii) reserves for reinsured losses reported and outstanding;

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

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

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

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

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

(D) The trust agreement shall provide that:

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

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

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

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

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

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

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

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

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

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

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

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

(G) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

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

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

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

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

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

the ceding insurer if not otherwise paid by the assuming insurer;

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

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

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

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

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

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

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

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

(M) Either the reinsurance agreement or the trust agreement shall stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the insurance code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed 5% of total investments. The agreement may further specify the types of investments to be deposited. If the

reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph shall be included in the reinsurance agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) court or arbitration costs;

(c) attorney's fees; and

(d) any other reasonable expenses.

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

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

(l) *Letters of credit qualified under subsection (j)(1).* (1) The letter of credit shall be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution, as defined in K.S.A. 40-221a(c)(1), and amendments thereto. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any

other agreements, documents or entities, except as provided in subsection (m)(8)(A). As used in this subsection, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. K.S.A. 2020 Supp. 40-201a is hereby amended to read as follows: 40-201a. (a) The marketing, sale, offering for sale, issuance,

making, proposing to make and administration of a service contract shall not be construed to be the business of insurance and shall be exempt from regulation as insurance pursuant to chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

(b) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

(c) (1) No service contract that is exempt from regulation as insurance pursuant to chapter 40 of the Kansas Statutes Annotated, and amendments thereto, pursuant to this section shall contain any provision for consequential damages unless such consequential

damages are caused by the failure of service, repair, replacement or maintenance rendered under the service contract.

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

Sec. 3. K.S.A. 2020 Supp. 40-221a is hereby amended to read as follows: 40-221a. (a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of ~~paragraphs~~ *paragraph* (1), (2), (3), (4), (5) ~~or~~, (6) *or (7)*. Credit shall be allowed under ~~paragraphs~~ *paragraph* (1), (2) or (3) ~~of this subsection~~ only as respects cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed only under ~~paragraphs~~ *paragraph* (3) or (4) ~~of this subsection~~ if the applicable requirements of paragraph (7) have been satisfied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

trusteed surplus shall not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust;

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

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

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

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

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

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

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

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

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

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

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

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

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

reinsurer in this state and the reinsurer secures its obligations in accordance with the following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

certified reinsurers domiciled within that jurisdiction. A jurisdiction shall not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

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

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

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

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

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

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

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

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

(iv) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and the commissioner has the discretion to impose further

reductions in allowable credit upon finding there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

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

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

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

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

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

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

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

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

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

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

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

according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth by the commissioner.

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

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

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

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

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

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

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

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

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

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

(viii) Nothing in this provision precludes an assuming insurer

from providing the commissioner with information on a voluntary basis.

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

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

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

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

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

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

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

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

(F) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement,

except as expressly prohibited by this section or other applicable law or regulation.

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

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

(I) Nothing in this subsection shall:

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

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

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

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

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

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

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

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

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

(B) The assets shall be distributed and claims shall be filed with and valued by the commissioner with regulatory oversight in

accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

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

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

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

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

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

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

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

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

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

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

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

insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

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

(1) Cash;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the person:

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

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

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

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

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

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

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

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

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

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

(d) "Principal place of business" means, with respect to determining the home state of the insured, the state where the insured

maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured.

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

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

Sec. 5. K.S.A. 2020 Supp. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

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

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

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

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

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

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

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

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

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

(j) "RBC instructions" means the risk-based capital instructions promulgated by the NAIC that are in effect on December 31, ~~2019~~ *2020*, or any later version promulgated by the NAIC as may be adopted by the commissioner under K.S.A. 2020 Supp. 40-2c29, and amendments thereto.

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

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

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

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

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

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

called the "revised RBC plan."

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

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

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

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

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

Sec. 6. K.S.A. 2020 Supp. 40-4,104 is hereby amended to read as follows: 40-4,104. The minimum values as specified in K.S.A. 2020 Supp. 40-4,105, 40-4,106, 40-4,107, 40-4,108 and 40-4,110, and amendments thereto, of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section~~ and amendments thereto~~.

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

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

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

(C) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subsection (b).

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

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

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

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

(2) reduced by 125 basis points;

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

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

(c) During the period or term that an annuity contract provides substantive participation in an equity indexed benefit, such annuity contract may increase the reduction described in~~ paragraph (2) of~~ subsection (b)~~ above~~*(2)* by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the issue date of such annuity contract, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value

of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

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

Sec. 7. K.S.A. 40-22a04 is hereby amended to read as follows: 40-22a04. (a) The commissioner shall adopt rules and regulations~~, with the advice of the advisory committee created by K.S.A. 40-22a05,~~ establishing standards governing the conduct of utilization review activities performed in this state or affecting residents *or healthcare providers* of this state by utilization review organizations. Unless granted an exemption under K.S.A. 40-22a06, *and amendments thereto,* no utilization review organization may conduct utilization review services in this state or affecting residents of this state ~~on or after May 1, 1995,~~ without first obtaining a certificate from the commissioner.

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

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

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

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

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

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

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

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

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

Sec. 8. K.S.A. 2020 Supp. 40-22a05 is hereby amended to read as follows: 40-22a05. ~~(a) There is hereby created an advisory committee which shall assist the commissioner in the adoption of rules and regulations to implement the provisions of this act. The advisory committee shall consist of 13 persons appointed by the commissioner as follows:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(3)~~*(c)* any medical programs operated by the secretary for aging and disability services or any entity to the extent it is acting under contract with the secretary.

Sec. 9. K.S.A. 40-22a06 is hereby amended to read as follows: 40-22a06. (a) No certificate shall be required for utilization review activities conducted by or on behalf of:

(1) An agency of the federal government;

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

(3) a federally qualified health maintenance organization authorized to transact business in Kansas ~~which~~ *that* is administering a quality assurance program and performing utilization review activities

for its own members as required by 42 U.S.C. § 300e(c)(8) and 42 U.S.C. § 300e(c)(6) respectively;

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

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

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

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

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

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

(2) such other utilization review organizations ~~as the advisory committee may recommend and~~ the commissioner approves.

Sec. 10. K.S.A. 2020 Supp. 40-3302 is hereby amended to read as follows: 40-3302. As used in ~~this act~~ *the insurance holding company act*, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

(2) meets the following criteria:

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

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

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

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

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

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

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

Sec. 11. K.S.A. 2020 Supp. 40-3304 is hereby amended to read as follows: 40-3304. (a) (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or

indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed. The requirements of this section shall not apply to the merger or consolidation of those companies subject to the requirements of K.S.A. 40-507 and 40-1216 ~~to~~ *through* 40-1225~~, inclusive~~, and amendments thereto.

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

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

(4) For the purposes of this section:

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

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

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

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

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

(B) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or

executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (A);

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

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

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

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

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

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

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

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

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

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

(12) an agreement by the person required to file the statement

referred to in subsection (a) that such person will provide the annual report, specified in ~~subsection (l) of~~ K.S.A. 40-3305*(l)*, and amendments thereto, for so long as control exists;

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

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

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

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

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

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

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

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

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

(D) the competence, experience and integrity of those persons

who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer or of the public to permit the merger or other acquisition of control; or

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 12. K.S.A. 2020 Supp. 40-3306 is hereby amended to read as follows: 40-3306. (a) Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable;

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

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

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

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

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

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

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

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

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

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

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

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

(3) Reinsurance agreements or modifications thereto, including:

(A) All reinsurance pooling agreements; and

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

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

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

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

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

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

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

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

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

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

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

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

(i) ~~Ten percent~~*10%* of such insurer's surplus as regards

policyholders as of December 31 immediately preceding; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 13. K.S.A. 2020 Supp. 40-3402 is hereby amended to read as follows: 40-3402. (a) *Prior to January 1, 2022,* a policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than $200,000 per claim, subject to not less than a $600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident healthcare provider as a condition of active licensure or other statutory authorization to render professional service as a healthcare provider in this state, unless such healthcare provider is a self-insurer. *For all new policies and policies that renew on and after January 1, 2022, a policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than $500,000 per claim, subject to not less than a $1,500,000 annual aggregate for all claims made during the policy period, shall be maintained by each resident healthcare provider as a condition of active licensure or other statutory authorization to render professional service as a healthcare provider in this state, unless such healthcare provider is a self-insurer.* This provision shall not apply to optometrists and pharmacists on ~~or~~ *and* after July 1, 1991 ~~nor,~~ to physical therapists on and after July 1, 1995 ~~nor,~~ *or* to health maintenance organizations on ~~or~~ *and* after July 1, 1997. Such policy shall provide as a minimum coverage for claims made during the term of the policy ~~which~~ *that* were incurred during the term of such policy or during the prior term of a similar policy. Any insurer offering such policy of professional liability insurance to any healthcare provider may offer to such healthcare provider a policy as prescribed in this section with deductible options. Such deductible shall be within such policy limits.

(1) Each insurer providing basic coverage shall, within 30 days after the effective date of any policy issued in accordance with this subsection, notify the board of governors that such coverage is or will be in effect. Such notification shall be on a form approved by the board of governors and shall include information identifying the professional liability policy issued or to be issued, the name and address of all healthcare providers covered by the policy, the amount of the annual premium, the effective and expiration dates of the coverage and such other information as the board of governors shall require. A copy of the notice required by this subsection shall be furnished *to* the named insured.

(2) In the event of termination of basic coverage by cancellation, nonrenewal, expiration or otherwise by either the insurer or named insured, notice of such termination shall be furnished by the insurer to the board of governors, the state agency which licenses, registers or certifies the named insured and the named insured. Such notice shall be provided no less than 30 days prior to the effective date of any termination initiated by the insurer or within 10 business days after the date coverage is terminated at the request of the named insured and shall include the name and address of the healthcare provider or providers for whom basic coverage is terminated and the date basic coverage will cease to be in effect. No basic coverage shall be terminated by cancellation or failure to renew by the insurer unless

such insurer provides a notice of termination as required by this subsection.

(3) Any professional liability insurance policy issued, delivered or in effect in this state on and after July 1, 1976, shall contain or be endorsed to provide basic coverage as required by subsection (a) ~~of this section~~. Notwithstanding any omitted or inconsistent language, any contract of professional liability insurance shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July 1, 1984.

(b) A nonresident healthcare provider shall not be licensed to actively render professional service as a healthcare provider in this state unless such healthcare provider maintains continuous coverage in effect as prescribed by subsection (a), except such coverage may be provided by a nonadmitted insurer who has filed the form required by subsection (b)(1). This provision shall not apply to optometrists and pharmacists on ~~or~~ *and* after July 1, 1991 ~~nor~~*, or* to physical therapists on and after July 1, 1995.

(1) Every insurance company authorized to transact business in this state, that is authorized to issue professional liability insurance in any jurisdiction, shall file with the commissioner, as a condition of its continued transaction of business within this state, a form prescribed by the commissioner declaring that its professional liability insurance policies, wherever issued, shall be deemed to provide at least the insurance required by this subsection when the insured is rendering professional services as a nonresident healthcare provider in this state. Any nonadmitted insurer may file such a form.

(2) Every nonresident healthcare provider ~~who~~ *that* is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the board of governors pursuant to ~~subsection (a) of~~ K.S.A. 40-3404*(a)*, and amendments thereto, directly to the board of governors and shall furnish to the board of governors the information required in subsection (a)(1).

(c) Every healthcare provider that is a self-insurer, the university of Kansas medical center for persons engaged in residency training, as described in ~~subsection (r)(1) of~~ K.S.A. 40-3401*(r)(1)*, and amendments thereto, the employers of persons engaged in residency training, as described in ~~subsection (r)(2) of~~ K.S.A. 40-3401*(r)(2)*, and amendments thereto, the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center or a medical care facility or mental health center for self-insurers under ~~subsection (e) of~~ K.S.A. 40-3414*(e)*, and amendments thereto, shall pay the surcharge levied by the board of governors pursuant to ~~subsection (a) of~~ K.S.A. 40-3404*(a)*, and amendments thereto, directly to the board of governors and shall furnish to the board of governors the information required in ~~subsection~~ *subsections* (a)(1) and (a)(2).

(d) In lieu of a claims made policy otherwise required under this section, a person engaged in residency training who is providing services as a healthcare provider but*,* while providing such services*,* is not covered by the self-insurance provisions of ~~subsection (d) of~~ K.S.A. 40-3414*(d)*, and amendments thereto, may obtain basic coverage under an occurrence form policy*,* if such policy provides professional liability insurance coverage and limits ~~which~~ *that* are substantially the same as the professional liability insurance coverage and limits required by ~~subsection (a) of~~ K.S.A. 40-3402*(a)*, and amendments thereto. Where such occurrence form policy is in effect, the provisions of the healthcare provider insurance availability act referring to claims made

policies shall be construed to mean occurrence form policies.

(e) In lieu of a claims made policy otherwise required under this section, a nonresident healthcare provider employed pursuant to a locum tenens contract to provide services in this state as a healthcare provider may obtain basic coverage under an occurrence form policy, if such policy provides professional liability insurance coverage and limits ~~which~~ *that* are substantially the same as the professional liability insurance coverage and limits required by K.S.A. 40-3402, and amendments thereto. Where such occurrence form policy is in effect, the provisions of the healthcare provider insurance availability act referring to claims made policies shall be construed to mean occurrence form policies.

Sec. 14. K.S.A. 2020 Supp. 40-3403 is hereby amended to read as follows: 40-3403. (a) For the purpose of paying damages for personal injury or death arising out of the rendering of or the failure to render professional services by a healthcare provider, self-insurer or inactive health care provider subsequent to the time that such healthcare provider or self-insurer has qualified for coverage under the provisions of this act, there is hereby established the healthcare stabilization fund. The fund shall be held in trust in the state treasury and accounted for separately from other state funds. The board of governors shall administer the fund or contract for the administration of the fund with an insurance company authorized to do business in this state.

(b) (1) There is hereby created a board of governors that shall be composed of such members and shall have such powers, duties and functions as are prescribed by this act. The board of governors shall:

(A) Administer the fund and exercise and perform other powers, duties and functions required of the board under the healthcare provider insurance availability act;

(B) provide advice, information and testimony to the appropriate licensing or disciplinary authority regarding the qualifications of a healthcare provider;

(C) prepare and publish, on or before October 1 of each year, a report for submission to the healthcare stabilization fund oversight committee that includes a summary of the fund's activity during the preceding fiscal year, including, but not limited to, the amount collected from surcharges, the highest and lowest surcharges assessed, the amount paid from the fund, the number of judgments paid from the fund, the number of settlements paid from the fund and the fund balance at the end of the fiscal year; and

(D) have the authority to grant temporary exemptions from the provisions of K.S.A. 40-3402 and 40-3404, and amendments thereto, to healthcare providers who have exceptional circumstances and verify in writing that the healthcare provider will not render professional services in this state during the period of exemption. Whenever the board grants such an exemption, the board shall notify the state agency that licenses the exempted healthcare provider.

(2) The board shall consist of 11 persons appointed by the commissioner of insurance, as provided by this subsection and as follows:

(A) Three members who are *on a list of nominees submitted to the commissioner by the Kansas medical society, at least two of whom are doctors of medicine who are* licensed to practice medicine and surgery in Kansas ~~who are doctors of medicine and who are on a list of nominees submitted to the commissioner by the Kansas medical society~~;

(B) three members who are *on a list of nominees submitted to the commissioner by the Kansas hospital association and who are* representatives of Kansas hospitals ~~and who are on a list of nominees~~

~~submitted to the commissioner by the Kansas hospital association~~;

(C) two members *who are on a list of nominees submitted to the commissioner by the Kansas association of osteopathic medicine,* who are licensed to practice medicine and surgery in Kansas *and* who are doctors of osteopathic medicine~~ and who are on a list of nominees submitted to the commissioner by the Kansas association of osteopathic medicine~~;

(D) one member who is *on a list of nominees submitted to the commissioner by the Kansas chiropractic association and who is* licensed to practice chiropractic in Kansas~~ and who is on a list of nominees submitted to the commissioner by the Kansas chiropractic association~~;

(E) one member who is *on a list of nominees submitted to the commissioner by the Kansas association of nurse anesthetists and who is* a licensed professional nurse authorized to practice as a registered nurse anesthetist~~ who is on a list of nominees submitted to the commissioner by the Kansas association of nurse anesthetists~~; and

(F) one member who is *on a list of nominees submitted to the commissioner by statewide associations comprised of members who represent adult care homes and who is* a representative of adult care homes~~ who is on a list of nominees submitted to the commissioner by statewide associations comprised of members who represent adult care homes~~.

(3) When a vacancy occurs in the membership of the board of governors created by this act, the commissioner shall appoint a successor of like qualifications from a list of three nominees submitted to the commissioner by the professional society or association prescribed by this section for the category of healthcare provider required for the vacant position on the board of governors. All appointments made shall be for a term of office of four years, but no member shall be appointed for more than two successive four-year terms. Each member shall serve until a successor is appointed and qualified. Whenever a vacancy occurs in the membership of the board of governors created by this act for any reason other than the expiration of a member's term of office, the commissioner shall appoint a successor of like qualifications to fill the unexpired term. In each case of a vacancy occurring in the membership of the board of governors, the commissioner shall notify the professional society or association that represents the category of healthcare provider required for the vacant position and request a list of three nominations of healthcare providers from which to make the appointment.

(4) The board of governors shall organize in July of each year and shall elect a chairperson and vice-chairperson from among its membership. Meetings shall be called by the chairperson or by a written notice signed by three members of the board.

(5) The board of governors, in addition to other duties imposed by this act, shall study and evaluate the operation of the fund and make such recommendations to the legislature as may be appropriate to ensure the viability of the fund.

(6) (A) The board shall appoint an executive director who shall be in the unclassified service under the Kansas civil service act and may employ attorneys and other employees who shall also be in the unclassified service under the Kansas civil service act. Such executive director, attorneys and other employees shall receive compensation fixed by the board, in accordance with appropriation acts of the legislature, not subject to approval of the governor.

(B) The board may provide all office space, services, equipment, materials and supplies, and all budgeting, personnel, purchasing and related management functions required by the board in the exercise of

the powers, duties and functions imposed or authorized by the healthcare provider insurance availability act or may enter into a contract with the commissioner of insurance for the provision, by the commissioner, of all or any part thereof.

(7) The commissioner shall:

(A) Provide technical and administrative assistance to the board of governors with respect to administration of the fund upon request of the board; *and*

(B) provide such expertise as the board may reasonably request with respect to evaluation of claims or potential claims.

(c) Except as otherwise provided by any other provision of this act, the fund shall be liable to pay:

(1) Any amount due from a judgment or settlement that is in excess of the basic coverage liability of all liable resident healthcare providers or resident self-insurers for any personal injury or death arising out of the rendering of or the failure to render professional services within or without this state;

(2) subject to the provisions of ~~subsections~~ *subsection* (f) ~~and (m)~~, any amount due from a judgment or settlement that is in excess of the basic coverage liability of all liable nonresident healthcare providers or nonresident self-insurers for any such injury or death arising out of the rendering or the failure to render professional services within this state but in no event shall the fund be obligated for claims against nonresident healthcare providers or nonresident self-insurers who have not complied with this act or for claims against nonresident healthcare providers or nonresident self-insurers that arose outside of this state;

(3) subject to the provisions of ~~subsections~~ *subsection* (f) ~~and (m)~~, any amount due from a judgment or settlement against a resident inactive healthcare provider for any such injury or death arising out of the rendering of or failure to render professional services;

(4) subject to the provisions of ~~subsections~~ *subsection* (f) ~~and (m)~~, any amount due from a judgment or settlement against a nonresident inactive healthcare provider for any injury or death arising out of the rendering or failure to render professional services within this state, but in no event shall the fund be obligated for claims against *nonresident inactive healthcare providers*:

(A) ~~Nonresident inactive healthcare providers~~ Who have not complied with this act; or

(B) ~~nonresident inactive healthcare providers~~ for claims that arose outside of this state, unless such healthcare provider was a resident healthcare provider or resident self-insurer at the time such act occurred;

(5) subject to K.S.A. 40-3411(b), and amendments thereto, reasonable and necessary expenses for attorney fees, depositions, expert witnesses and other costs incurred in defending the fund against claims, and such expenditures shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto;

(6) any amounts expended for reinsurance obtained to protect the best interests of the fund purchased by the board of governors, which purchase shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, but shall not be subject to the provisions of K.S.A. 75-4101, and amendments thereto;

(7) reasonable and necessary actuarial expenses incurred in administering the act, including expenses for any actuarial studies contracted for by the legislative coordinating council, and such expenditures shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto;

(8) periodically to the plan or plans, any amount due pursuant to K.S.A. 40-3413(a)(3), and amendments thereto;

(9) reasonable and necessary expenses incurred by the board of governors in the administration of the fund or in the performance of other powers, duties or functions of the board under the healthcare provider insurance availability act;

(10) surcharge refunds payable when the notice of cancellation requirements of K.S.A. 40-3402, and amendments thereto, are met;

(11) subject to K.S.A. 40-3411(b), and amendments thereto, reasonable and necessary expenses for attorney fees and other costs incurred in defending a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center or any nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine from claims for personal injury or death arising out of the rendering of or the failure to render professional services by such healthcare provider;

(12) ~~notwithstanding the provisions of subsection (m),~~ any amount due from a judgment or settlement for an injury or death arising out of the rendering of or failure to render professional services by a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center or any nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine;

(13) subject to the provisions of K.S.A. 65-429, and amendments thereto, reasonable and necessary expenses for the development and promotion of risk management education programs and for the medical care facility licensure and risk management survey functions carried out under K.S.A. 65-429, and amendments thereto;

(14) ~~notwithstanding the provisions of subsection (m),~~ any amount, but not less than the required basic coverage limits, owed pursuant to a judgment or settlement for any injury or death arising out of the rendering of or failure to render professional services by a person, other than a person described in paragraph (12), who was engaged in a postgraduate program of residency training approved by the state board of healing arts but who, at the time the claim was made, was no longer engaged in such residency program;

(15) subject to K.S.A. 40-3411(b), and amendments thereto, reasonable and necessary expenses for attorney fees and other costs incurred in defending a person described in paragraph (14);

(16) expenses incurred by the commissioner in the performance of duties and functions imposed upon the commissioner by the healthcare provider insurance availability act, and expenses incurred by the commissioner in the performance of duties and functions under contracts entered into between the board and the commissioner as authorized by this section; and

(17) periodically to the state general fund reimbursements of amounts paid to members of the healthcare stabilization fund oversight committee for compensation, travel expenses and subsistence expenses pursuant to K.S.A. 40-3403b(e), and amendments thereto.

(d) All amounts for which the fund is liable pursuant to subsection (c) shall be paid promptly and in full except that, if the amount for which the fund is liable is ~~$300,000~~ *$500,000* or more, it shall be paid by installment payments of ~~$300,000~~ *$500,000* or 10% of the amount of the judgment including interest thereon, whichever is greater, per fiscal year, the first installment to be paid within 60 days after the fund becomes liable and each subsequent installment to be paid annually on

the same date of the year the first installment was paid, until the claim has been paid in full.

(e) In no event shall the fund be liable to pay in excess of $3,000,000 pursuant to any one judgment or settlement against any one healthcare provider relating to any injury or death arising out of the rendering of or the failure to render professional services on and after July 1, 1984, and before July 1, 1989, subject to an aggregate limitation for all judgments or settlements arising from all claims made in any one fiscal year in the amount of $6,000,000 for each healthcare provider.

(f) In no event shall the fund be liable to pay in excess of the amounts specified in the option selected by an active or inactive healthcare provider pursuant to subsection (l) for judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services by such healthcare provider on or after July 1, 1989.

(g) A healthcare provider shall be deemed to have qualified for coverage under the fund:

(1) On and after July 1, 1976, if basic coverage is then in effect;

(2) subsequent to July 1, 1976, at such time as basic coverage becomes effective; or

(3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414, and amendments thereto.

(h) A healthcare provider who is qualified for coverage under the fund shall have no vicarious liability or responsibility for any injury or death arising out of the rendering of or the failure to render professional services inside or outside this state by any other healthcare provider who is also qualified for coverage under the fund. The provisions of this subsection shall apply to all claims filed on or after July 1, 1986.

(i) Notwithstanding the provisions of K.S.A. 40-3402, and amendments thereto, if the board of governors determines due to the number of claims filed against a healthcare provider or the outcome of those claims that an individual healthcare provider presents a material risk of significant future liability to the fund, the board of governors is authorized by a vote of a majority of the members thereof, after notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, to terminate the liability of the fund for all claims against the healthcare provider for damages for death or personal injury arising out of the rendering of or the failure to render professional services after the date of termination. The date of termination shall be 30 days after the date of the determination by the board of governors. The board of governors, upon termination of the liability of the fund under this subsection, shall notify the licensing or other disciplinary board having jurisdiction over the healthcare provider involved of the name of the healthcare provider and the reasons for the termination.

(j) (1) Subject to the provisions of paragraph (7), upon the payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(11), the board of governors shall certify to the secretary of administration the amount of such payment, and the secretary of administration shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) or (4), from the state general fund to the healthcare stabilization fund.

(2) Subject to the provisions of paragraph (7), upon the payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(12), the board of governors shall certify to the secretary of administration the amount of such payment that is equal to the basic coverage liability of self-insurers, and the secretary of administration shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) or (4), from the state

general fund to the healthcare stabilization fund.

(3) The university of Kansas medical center private practice foundation reserve fund is hereby established in the state treasury. If the balance in such reserve fund is less than $500,000 on July 1 of any year, the private practice corporations or foundations referred to in K.S.A. 40-3402(c), and amendments thereto, shall remit the amount necessary to increase such balance to $500,000 to the state treasurer for credit to such reserve fund as soon after such July 1 date as is practicable. Upon receipt of each such remittance, the state treasurer shall credit the same to such reserve fund. When compliance with the foregoing provisions of this paragraph have been achieved on or after July 1 of any year in which the same are applicable, the state treasurer shall certify to the board of governors that such reserve fund has been funded for the year in the manner required by law. Moneys in such reserve fund may be invested or reinvested in accordance with the provisions of K.S.A. 40-3406, and amendments thereto, and any income or interest earned by such investments shall be credited to such reserve fund. Upon payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any private practice corporation or foundation or any of its full-time physician faculty employed by the university of Kansas, the secretary of administration shall transfer an amount equal to the amount paid from the university of Kansas medical center private practice foundation reserve fund to the healthcare stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance in such reserve fund.

(4) The graduate medical education administration reserve fund is hereby established in the state treasury. If the balance in such reserve fund is less than $40,000 on July 1 of any year, the nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall remit the amount necessary to increase such balance to $40,000 to the state treasurer for credit to such reserve fund as soon after such July 1 date as is practicable. Upon receipt of each such remittance, the state treasurer shall credit the same to such reserve fund. When compliance with the foregoing provisions of this paragraph have been achieved on or after July 1 of any year in which the same are applicable, the state treasurer shall certify to the board of governors that such reserve fund has been funded for the year in the manner required by law. Moneys in such reserve fund may be invested or reinvested in accordance with the provisions of K.S.A. 40-3406, and amendments thereto, and any income or interest earned by such investments shall be credited to such reserve fund. Upon payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine the secretary of administration shall transfer an amount equal to the amount paid from the graduate medical education administration reserve fund to the healthcare stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance in such reserve fund.

(5) Upon payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(14) or (c)(15), the board of governors shall certify to the secretary of administration the amount of such payment, and the secretary of administration shall transfer an amount equal to the amount certified from the state general fund to the healthcare stabilization fund.

(6) Transfers from the state general fund to the healthcare stabilization fund pursuant to this subsection shall not be subject to the provisions of K.S.A. 75-3722, and amendments thereto.

(7) The funds required to be transferred from the state general fund to the healthcare stabilization fund pursuant to paragraphs (1) and (2) for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013, shall not be transferred prior to July 1, 2013. The secretary of administration shall maintain a record of the amounts certified by the board of governors pursuant to paragraphs (1) and (2) for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013. Beginning July 1, 2013, in addition to any other transfers required pursuant to subsection (j), the state general fund transfers that are deferred pursuant to this paragraph shall be transferred from the state general fund to the healthcare stabilization fund in the following manner: On July 1, 2013, and annually thereafter through July 1, 2018, an amount equal to 20% of the total amount of state general fund transfers deferred pursuant to this paragraph for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013. The amounts deferred pursuant to this paragraph shall not accrue interest thereon.

(k) Notwithstanding any other provision of the healthcare provider insurance availability act, no psychiatric hospital licensed under K.S.A. 2020 Supp. 39-2001 et seq., and amendments thereto, shall be assessed a premium surcharge or be entitled to coverage under the fund if such hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404, and amendments thereto, prior to January 1, 1988.

(l) *(1)* On or after July 1, 1989, *and prior to January 1, 2022,* every healthcare provider shall make an election to be covered by one of the following options provided in ~~this subsection~~ *subparagraph (A)* that shall limit the liability of the fund with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after July 1, 1989. *On and after January 1, 2022, every healthcare provider shall make an election to be covered by one of the following options provided in subparagraph (B) that shall limit the liability of the fund with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after January 1, 2022.* Such election shall be made at the time the healthcare provider renews the basic coverage ~~in effect on July 1, 1989~~, or, if basic coverage is not in effect, such election shall be made at the time such coverage is acquired pursuant to K.S.A. 40-3402, and amendments thereto. *A medical care facility or a healthcare facility deemed qualified as a self-insurer under K.S.A. 40-3414(a), and amendments thereto, may opt out of the requirements set forth in subparagraph (B) if such medical care facility or healthcare facility substantially meets the minimum coverage requirements of this section through coverage provided by the captive insurance company of such medical care facility or healthcare facility.* Notice of the election shall be provided by the insurer providing the basic coverage in the manner and form prescribed by the board of governors and shall continue to be effective from year to year unless modified by a subsequent election made prior to the anniversary date of the policy. The healthcare provider may at any subsequent election reduce the dollar amount of the coverage for the next and subsequent fiscal years, but may not increase the same, unless specifically authorized by the board of governors. Any election of fund coverage limits, whenever made, shall be with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after the effective date of such election of fund coverage limits. Such election shall be made for

persons engaged in residency training and persons engaged in other postgraduate training programs approved by the state board of healing arts at medical care facilities or mental health centers in this state by the agency or institution paying the surcharge levied under K.S.A. 40-3404, and amendments thereto, for such persons. The election of fund coverage limits for a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to be effective at the highest option. Such options shall be as follows:

~~(1)~~*(A) (i) OPTION 1*. The fund shall not be liable to pay in excess of $100,000 pursuant to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $300,000 for such provider.

~~(2)~~*(ii) OPTION 2*. The fund shall not be liable to pay in excess of $300,000 pursuant to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $900,000 for such provider.

~~(3)~~*(iii) OPTION 3*. The fund shall not be liable to pay in excess of $800,000 pursuant to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $2,400,000 for such healthcare provider.

(B) (i) OPTION 1. The fund shall not be liable to pay in excess of $500,000 pursuant to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $1,500,000 for such healthcare provider.

(ii) OPTION 2. The fund shall not be liable to pay in excess of $1,500,000 pursuant to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $4,500,000 for such healthcare provider.

(2) The board of governors shall have the authority to adjust the amounts provided in subparagraph (B) as the board deems necessary to effectuate the provisions of the healthcare provider insurance availability act, except that the minimum coverage for a healthcare provider shall not be less than $1,000,000 per claim and $3,000,000 in the aggregate.

(m) ~~The fund shall not be liable for any amounts due from a judgment or settlement against resident or nonresident inactive healthcare providers who first qualify as an inactive healthcare provider on or after July 1, 1989, unless such healthcare provider has been in compliance with K.S.A. 40-3402, and amendments thereto, for a period of not less than five years. If a healthcare provider has not been in compliance for five years, such healthcare provider may make application and payment for the coverage for the period while they are nonresident healthcare providers, nonresident self-insurers or resident or nonresident inactive healthcare providers to the fund. Such payment shall be made within 30 days after the healthcare provider ceases being an active healthcare provider and shall be made in an amount determined by the board of governors to be sufficient to fund anticipated claims based upon reasonably prudent actuarial principles. The provisions of this subsection shall not be applicable to any healthcare provider that becomes inactive through death or retirement, or through disability or circumstances beyond such healthcare provider's control, if such healthcare provider notifies the board of~~

~~governors and receives approval for an exemption from the provisions of this subsection. Any period spent in a postgraduate program of residency training approved by the state board of healing arts shall not be included in computation of time spent in compliance with the provisions of K.S.A. 40-3402, and amendments thereto. The provisions of this subsection shall expire on July 1, 2014.~~

~~(n)~~ In the event of a claim against a healthcare provider for personal injury or death arising out of the rendering of or the failure to render professional services by such healthcare provider, the liability of the fund shall be limited to the amount of coverage selected by the healthcare provider at the time of the incident giving rise to the claim.

~~(o)~~*(n)* Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, to the contrary, the fund shall in no event be liable for any claims against any healthcare provider based upon or relating to the healthcare provider's sexual acts or activity, but in such cases the fund may pay reasonable and necessary expenses for attorney fees incurred in defending the fund against such claim. The fund may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the healthcare provider for damages resulting from the healthcare provider's sexual acts or activity.

Sec. 15. K.S.A. 2020 Supp. 40-3408 is hereby amended to read as follows: 40-3408. (a) ~~The insurer of a healthcare provider covered by the fund or self-insurer shall be liable only for the first $200,000 of a claim for personal injury or death arising out of the rendering of or the failure to render professional services by such healthcare provider, subject to an annual aggregate of $600,000 for all such claims against the healthcare provider~~ *For a claim for personal injury or death arising out of the rendering of or the failure to render professional services by a healthcare provider, the insurer of a healthcare provider covered by the fund or self-insurer shall be liable only for the amount of basic coverage in effect on the date of the incident giving rise to the claim, subject to an annual aggregate amount of not less than three times the primary amount for all such claims against the healthcare provider*. ~~However,~~ If any liability insurance in excess of such amounts is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act.

(b) If any inactive healthcare provider has liability insurance in effect ~~which~~ *that* is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act.

(c) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, to the contrary, an insurer that provides coverage to a healthcare provider may exclude from coverage any liability incurred by such provider:

(1) From the rendering of or the failure to render professional services by any other healthcare provider who is required by K.S.A. 40-3402, and amendments thereto, to maintain professional liability insurance in effect as a condition to rendering professional services as a healthcare provider in this state; or

(2) based upon or relating to the healthcare provider's sexual acts or activity, but in such cases the insurer may provide reasonable and necessary expenses for attorney fees incurred in defending against such claim. The insurer may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the healthcare provider for damages resulting from the healthcare provider's sexual

acts or activity.

(d) The fund shall not be liable for payment of any claim excluded by an insurer pursuant to this section or any claim otherwise excluded from coverage under a healthcare provider's professional liability insurance.

(e) Notwithstanding any provision of article 34 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, to the contrary, an insurer that provides coverage to a healthcare provider may exclude from coverage:

(1) Any liability incurred by such healthcare provider as a result of professional services rendered as a charitable healthcare provider; or

(2) any liability incurred by such healthcare provider that is covered under the federal tort claims act pursuant to chapter 171 of title 28 of the United States code.

Sec. 16. K.S.A. 40-3409 is hereby amended to read as follows: 40-3409. (a) (1) In any action filed in this state for personal injury or death arising out of the rendering of or the failure to render professional services by any ~~health care~~ *healthcare* provider covered by the fund or any inactive ~~health care~~ *healthcare* provider covered by the fund, the plaintiff shall serve a copy of the petition upon the board of governors by registered mail*, certified mail, priority mail, commercial delivery service or first class mail* within ~~10~~ *30 calendar* days from filing the same, and if such service is not made the fund shall not be liable for any amount due from a judgment or a settlement nor, in such case, shall the ~~health care~~ *healthcare* provider or the provider's insurer or the inactive ~~health care~~ *healthcare* provider or the provider's insurer be liable for such amount that, if such service had been made, would have been paid by the fund; (2) in any action filed outside of this state for personal injury or death arising out of the rendering of or the failure to render professional services by any ~~health care~~ *healthcare* provider or any inactive ~~health care~~ *healthcare* provider covered by the fund, the inactive ~~health care~~ *healthcare* provider, the self-insurer or the insurer of a ~~health care~~ *healthcare* provider or an inactive ~~health care~~ *healthcare* provider shall notify the board of governors, as soon as it is reasonably practicable, that such summons or petition has been filed. If the petition names as a defendant in the action a ~~health care~~ *healthcare* provider who is licensed, registered or certified by the state board of healing arts, the board of governors shall forward a copy of the petition to the state board of healing arts.

(b) Such action shall be defended by the insurer or the self-insurer, but if the board of governors believes it to be in the best interests of the fund, the board of governors may employ independent counsel to represent the interests of the fund. The cost of employing such counsel shall be paid from the fund. The board of governors is authorized to employ independent counsel in any such action against an inactive ~~health care~~ *healthcare* provider covered by the fund.

(c) The attorneys of record and the board of governors shall submit to the state board of healing arts expert witness reports which have been made available to the opposing parties in the case and, upon the request of the state board of healing arts, any depositions, interrogatories, admissions or other relevant information concerning the case which has been made available to the opposing parties in the case shall also be submitted. The board of governors shall not be required to furnish information not in the possession of the board of governors. Any report or other information made available to the state board of healing arts in accordance with this subsection shall be subject to K.S.A. 65-2898a and amendments thereto. Reasonable expenses incurred in reproducing such reports or other information shall be paid by the state board of healing arts.

Sec. 17. K.S.A. 2020 Supp. 40-3414 is hereby amended to read as follows: 40-3414. (a) *(1)* Any ~~health care~~ *healthcare* provider or any ~~health care~~ *healthcare* system organized and existing under the laws of this state which owns and operates more than one medical care facility or more than one ~~health care~~ *healthcare* facility, as defined in K.S.A. 40-3401, and amendments thereto, licensed by the state of Kansas, whose aggregate annual insurance premium is or would be ~~$100,000~~ *$150,000* or more for basic coverage calculated in accordance with rating procedures approved by the commissioner pursuant to K.S.A. 40-3413, and amendments thereto, may qualify as a self-insurer by obtaining a certificate of self-insurance from the board of governors. Upon application of any such ~~health care~~ *healthcare* provider or ~~health care~~ *healthcare* system, on a form prescribed by the board of governors, the board of governors may issue a certificate of self-insurance if the board of governors is satisfied that the applicant ~~is possessed~~ *possesses* and will continue to ~~be possessed of~~ *possess the* ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a ~~health care~~ *healthcare* provider obtained against such applicant arising from the applicant's rendering of professional services as a ~~health care~~ *healthcare* provider.

(2) In making such determination the board of governors shall consider:

~~(1)~~*(A)* The financial condition of the applicant;

~~(2)~~*(B)* the procedures adopted and followed by the applicant to process and handle claims and potential claims;

~~(3)~~*(C)* the amount and liquidity of assets reserved for the settlement of claims or potential claims; and

~~(4)~~*(D)* any other ~~relevant~~ factors *the board deems relevant.*

(3) Any applicant for self-insurance that owns and operates more than one medical care facility or more than one healthcare facility shall be deemed qualified by the board of governors if such applicant is insured by a captive insurance company, as defined in K.S.A. 40-4301, and amendments thereto, or under the laws of the state of domicile of any such captive insurance company.

(4) The certificate of self-insurance may contain reasonable conditions prescribed by the board of governors. Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the board of governors may cancel a certificate of self-insurance upon reasonable grounds therefor. Failure to pay any judgment for which the self-insurer is liable arising from the self-insurer's rendering of professional services as a ~~health care~~ *healthcare* provider, the failure to comply with any provision of this act or the failure to comply with any conditions contained in the certificate of self-insurance shall be reasonable grounds for the cancellation of such certificate of self-insurance. The provisions of this subsection shall not apply to the Kansas soldiers' home, the Kansas veterans' home or to any ~~person~~ *individual* who is a self-insurer pursuant to subsection (d) or (e).

(b) Any such ~~health care~~ *healthcare* provider or ~~health care~~ *healthcare* system that holds a certificate of self-insurance shall pay the applicable surcharge set forth in K.S.A. 40-3402(c), and amendments thereto.

(c) The Kansas soldiers' home and the Kansas veterans' home shall be self-insurers and shall pay the applicable surcharge set forth in K.S.A. 40-3402(c), and amendments thereto.

(d) ~~Persons~~*Individuals* engaged in residency training as provided in K.S.A. 40-3401(r)(1) and (2), and amendments thereto, shall be self-insured by the state of Kansas for occurrences arising during such training, and such ~~person~~ *individual* shall be deemed a self-insurer for the purposes of the ~~health care~~ *healthcare* provider insurance

availability act. Such self-insurance shall be applicable to ~~a person~~ *an individual* engaged in residency training only when such ~~person~~ *individual* is engaged in medical activities which do not include extracurricular, extra-institutional medical service for which such ~~person~~ *individual* receives extra compensation and which have not been approved as provided in K.S.A. 40-3401(r)(1) and (2), and amendments thereto.

(e) (1) ~~A person~~*An individual* engaged in a postgraduate training program approved by the state board of healing arts at a medical care facility or mental health center in this state may be self-insured by such medical care facility or mental health center in accordance with this subsection ~~(e)~~ and in accordance with such terms and conditions of eligibility therefor as may be specified by the medical care facility or mental health center and approved by the board of governors. ~~A person~~*An individual* self-insured under this subsection ~~(e)~~ by a medical care facility or mental health center shall be deemed a self-insurer for purposes of the ~~health care~~ *healthcare* provider insurance availability act. Upon application by a medical care facility or mental health center, on a form prescribed by the board of governors, the board of governors may authorize such medical care facility or mental health center to self-insure ~~persons~~ *individuals* engaged in postgraduate training programs approved by the state board of healing arts at such medical care facility or mental health center if the board of governors is satisfied that the medical care facility or mental health center is possessed and will continue to be possessed of ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a ~~health care~~ *healthcare* provider obtained against ~~a person~~ *an individual* engaged in such a postgraduate training program and arising from such ~~person's~~ *individual's* rendering of or failure to render professional services as a ~~health care~~ *healthcare* provider.

(2) In making such determination the board of governors shall consider:

(A) The financial condition of the medical care facility or mental health center;

(B) the procedures adopted by the medical care facility or mental health center to process and handle claims and potential claims;

(C) the amount and liquidity of assets reserved for the settlement of claims or potential claims by the medical care facility or mental health center; and

(D) any other factors the board of governors deems relevant.

The board of governors may specify such conditions for the approval of an application as the board of governors deems necessary. Upon approval of an application, the board of governors shall issue a certificate of self-insurance to each ~~person~~ *individual* engaged in such postgraduate training program at the medical care facility or mental health center who is self-insured by such medical care facility or mental health center.

(3) Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the board of governors may cancel, upon reasonable grounds therefor, a certificate of self-insurance issued pursuant to this subsection ~~(e)~~ or the authority of a medical care facility or mental health center to self-insure ~~persons~~ *individuals* engaged in such postgraduate training programs at the medical care facility or mental health center. Failure of ~~a person~~ *an individual* engaged in such postgraduate training program to comply with the terms and conditions of eligibility to be self-insured by the medical care facility or mental health center, the failure of a medical care facility or mental health center to pay any judgment for which such medical care facility or mental health center is liable as self-insurer of such ~~person~~

individual, the failure to comply with any provisions of the ~~health care~~ *healthcare* provider insurance availability act or the failure to comply with any conditions for approval of the application or any conditions contained in the certificate of self-insurance shall be reasonable grounds for cancellation of such certificate of self-insurance or the authority of a medical care facility or mental health center to self-insure such ~~persons~~ *individuals*.

(4) A medical care facility or mental health center authorized to self-insure ~~persons~~ *individuals* engaged in such postgraduate training programs shall pay the applicable surcharge set forth in K.S.A. 40-3402(c), and amendments thereto, on behalf of such ~~persons~~ *individuals*.

(5) As used in this subsection ~~(c)~~, "medical care facility" does not include the university of Kansas medical center or those community hospitals or medical care facilities described in K.S.A. 40-3401(r)(2), and amendments thereto.

(f) For the purposes of subsection (a), "~~health care~~*healthcare* provider" may include each health care provider in any group of ~~health care~~ *healthcare* providers who practice as a group to provide physician services only for a health maintenance organization, any professional corporations, partnerships or not-for-profit corporations formed by such group and the health maintenance organization itself. The premiums for each such provider, health maintenance organization and group corporation or partnership may be aggregated for the purpose of being eligible for and subject to the statutory requirements for self-insurance as set forth in this section.

(g) The provisions of subsections (a) and (f), relating to ~~health care~~ *healthcare* systems, shall not affect the responsibility of individual ~~health care~~ *healthcare* providers as defined in K.S.A. 40-3401(f), and amendments thereto, or organizations whose premiums are aggregated for purposes of being eligible for self-insurance from individually meeting the requirements imposed by K.S.A. 40-3402, and amendments thereto, with respect to the ability to respond to injury or damages to the extent specified therein and K.S.A. 40-3404, and amendments thereto, with respect to the payment of the ~~health care~~ *healthcare* stabilization fund surcharge.

(h) Each private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center and each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed a self-insurer for the purposes of the ~~health care~~ *healthcare* provider insurance availability act. The private practice corporation or foundation of which the full-time physician faculty is a member and each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall pay the applicable surcharge set forth in K.S.A. 40-3404(a), and amendments thereto, on behalf of the private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center or on behalf of a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine.

(i) (1) Subject to the provisions of paragraph (4), for the purposes of the ~~health care~~ *healthcare* provider insurance availability act, each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be

deemed to have been a ~~health care~~ *healthcare* provider as defined in K.S.A. 40-3401, and amendments thereto, from and after July 1, 1997.

(2) Subject to the provisions of paragraph (4), for the purposes of the ~~health care~~ *healthcare* provider insurance availability act, each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to have been a self-insurer within the meaning of subsection (h), and amendments thereto, from and after July 1, 1997.

(3) Subject to the provisions of paragraph (4), for the purposes of the ~~health care~~ *healthcare* provider insurance availability act, the election of fund coverage limits for each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to have been effective at the highest option, as provided in K.S.A. 40-3403(l), and amendments thereto, from and after July 1, 1997.

(4) No nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be required to pay to the fund any annual premium surcharge for any period prior to the effective date of this act. Any annual premium surcharge for the period commencing on the effective date of this act and ending on June 30, 2001, shall be prorated.

Sec. 18. K.S.A. 2020 Supp. 40-3424 is hereby amended to read as follows: 40-3424. (a) For all claims made on and after July 1, 2014, the amount of fund liability for a judgment or settlement against a resident or nonresident inactive healthcare provider shall be equal to the minimum professional liability insurance policy limits required pursuant to K.S.A. 40-3402, and amendments thereto, *and in effect on the date of the incident giving rise to a claim,* plus the level of coverage selected by the healthcare provider pursuant to K.S.A. 40-3403(l), and amendments thereto, at the time of the incident giving rise to a claim.

(b) The aggregate fund liability for all judgments and settlements arising from all claims made in any fiscal year against a resident or nonresident inactive healthcare provider shall not exceed $3,000,000 in any fiscal year.

~~(b) This section shall be part of and supplemental to the healthcare provider insurance availability act~~ *For all claims made for incidents occurring on or after January 1, 2022, the aggregate fund liability for all judgments and settlements made in any fiscal year against a resident or nonresident inactive healthcare provider shall not exceed three times the coverage amount in subsection (a)*.

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

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

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

(2) a copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile~~; but~~,

except that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance ~~which~~ *that*:

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

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

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

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

(b) *Financial condition.* Any risk retention group doing business in this state shall submit to the commissioner:

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

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

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

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

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

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

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

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

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

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

(g) *Notice to purchasers.* Any policy issued by a risk retention group shall contain in 10 point type on the front page and the declaration page, the following notice:

NOTICE

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

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

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

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

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

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

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

Sec. 20. K.S.A. 2020 Supp. 44-1704 is hereby amended to read as follows: 44-1704. (a) A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered pursuant to this section.

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

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

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

(2) the address of the principal place of business of the professional employer organization, and the address of each office the professional employer organization maintains in this state;

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

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

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

(6) a statement of management~~, which~~ *that* shall include the name and evidence of the business experience of any individual who serves

as president, chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and

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

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

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

(e) *A registrant's application shall automatically expire 120 days after the end of the registrant's fiscal year.* Within ~~60~~ *120* days after the end of a registrant's fiscal year, such registrant shall renew its registration by notifying the commissioner of any changes in the information provided in such registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect for the period of time the renewal application is pending.

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

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

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

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

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

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

(2) A limited registration is valid for one year, and may be

renewed *thereafter*.

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

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

(h) At the time of initial registration, the applicant shall submit the most recent audit of the applicant or such applicant's parent holding company~~, which~~. *The most recent* audit shall not be older than 13 months. Thereafter, a professional employer organization or professional employer group shall file on an annual basis, within ~~60~~ *120* days after the end of the professional employer organization's or parent holding company's fiscal year, a succeeding audit *and renewal registration application*. An applicant may apply to the commissioner for an extension of time to submit such audit, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date. For the initial application, if the closing date of the audited financial statements required by this section is older than three months from the date of the application, the application also shall include updated, ~~though~~ unaudited~~,~~ financial statements for the most recent quarter. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located~~,~~ and shall be without qualification as to the going concern status of the professional employer organization. A professional employer group may submit combined or consolidated audited financial statements to meet the requirements of this section. A professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least 12 months of operating history shall meet the financial capacity requirements of subsection (f) and present financial statements reviewed by a certified public accountant.

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

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

Sec. 21. K.S.A. 40-22a04, 40-22a06, 40-2405, 40-2501, 40-2502, 40-2503, 40-2504, 40-2505, 40-2506, 40-2507, 40-2508, 40-2509, 40-2510, 40-2511, 40-2512, 40-2513, 40-3409 and 40-4103 and K.S.A. 2020 Supp. 40-201a, 40-221a, 40-246i, 40-2c01, 40-4,104, 40-22a05, 40-3302, 40-3304, 40-3306, 40-3402, 40-3403, 40-3408, 40-3414, 40-3424 and 44-1704 are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

_____

SENATE adopted

Conference Committee Report _____

_____

President of the Senate.

_____

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

_____

Speaker of the House.

_____

Chief Clerk of the House.

APPROVED _____

_____

Governor.