

SENATE BILL No. 453

By Committee on Financial Institutions and Insurance

2-17

1 AN ACT concerning insurance; relating to the reinsurance of risk;
2 updating the national association of insurance commissioners credit for
3 reinsurance model law and codifying the national association of
4 insurance commissioners credit for reinsurance model regulation;
5 amending K.S.A. 2019 Supp. 40-221a and repealing the existing
6 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (ii) reserves for losses reported and outstanding;

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

16 (iv) reserves for allocated loss expenses; and

17 (v) unearned premiums.

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

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

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

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

25 (iv) liabilities for policy and contract claims.

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

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

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

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

8 (ii) a state of the United States;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (E) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (a) Standard & poor's;

43 (b) Moody's investors service;

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

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

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

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

24 Ratings	Best	S&P	Moody's	Fitch
25 Secure - 1	A++	AAA	Aaa	AAA
26 Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
27 Secure - 3	A	A+, A	A1, A2	A+, A
28 Secure - 4	A-	A-	A3	A-
29 Secure - 5	B++, B+	BBB+, BBB, 30 BBB-	Baa1, Baa2, 31 Baa3	BBB+, BBB, 32 BBB-
31 Vulnerable				
32 - 6	B, B-, 33 C++, C+, 34 C, C-, D 35 E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B B-, CCC+, CC, CCC-, DD

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

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

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

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

12 (vi) regulatory actions against the certified reinsurer;

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

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

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

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

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

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

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

41 (ii) the aggregate amount of reinsurance recoverables on paid losses
42 that are not in dispute that are overdue by 90 days or more exceeds
43 \$50,000,000.

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

12 (G) The certified reinsurer shall agree to meet applicable information
13 filing requirements as determined by the commissioner, both with respect
14 to an initial application for certification and on an ongoing basis. All
15 information submitted by certified reinsurers that is not otherwise public
16 information subject to disclosure shall be exempted from disclosure under
17 the open records act, K.S.A. 45-215, et seq., and amendments thereto, and
18 shall be withheld from public disclosure. The provisions of this
19 subparagraph providing for the confidentiality of public records shall
20 expire on July 1, 2025, unless the legislature reviews and continues such
21 provisions in accordance with K.S.A. 45-229, and amendments thereto.
22 The applicable information filing requirements are, as follows:

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

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

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

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

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

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

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

3 (H) *Change in rating or revocation of certification.*

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

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

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

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

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

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

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

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

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

5 (4) *Recognition of certification issued by a national association of*
6 *insurance commissioners accredited jurisdiction.*

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

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

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

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

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

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

42 (h) *Credit for reinsurance – reciprocal jurisdictions.* (1) Pursuant to
43 K.S.A. 40-221a(a)(6), and amendments thereto, the commissioner shall

1 allow credit for reinsurance ceded by a domestic insurer to an assuming
2 insurer that is licensed to write reinsurance by, and has its head office or is
3 domiciled in, a reciprocal jurisdiction, and that meets the other
4 requirements of this section.

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

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

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

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

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

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

37 (iii) recognizes the United States state regulatory approach to group
38 supervision and group capital, by providing written confirmation by a
39 competent regulatory authority, in such qualified jurisdiction, that insurers
40 and insurance groups that are domiciled or maintain their headquarters in
41 this state or another jurisdiction accredited by the national association of
42 insurance commissioners shall be subject only to worldwide prudential
43 insurance group supervision including worldwide group governance,

1 solvency and capital and reporting, as applicable, by the commissioner or
2 the commissioner of the domiciliary state and shall not be subject to group
3 supervision at the level of the worldwide parent undertaking of the
4 insurance or reinsurance group by the qualified jurisdiction; and

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

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

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

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

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

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

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

30 (b) a central fund containing a balance of the equivalent of at least
31 \$250,000,000.

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

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

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

41 (iii) if the assuming insurer is domiciled in a reciprocal jurisdiction,
42 as defined in subsection (h)(2)(C), after consultation with the reciprocal
43 jurisdiction and considering any recommendations published through the

1 national association of insurance commissioners committee process, such
2 solvency or capital ratio as the commissioner determines to be an effective
3 measure of solvency.

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

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

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

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

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

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

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

40 (v) The assuming insurer shall confirm that it is not presently
41 participating in any solvent scheme of arrangement that involves this
42 state's ceding insurers and agree to notify the ceding insurer and the
43 commissioner and to provide 100% security to the ceding insurer

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

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

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

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

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

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

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

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

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

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

1 insurer, or as otherwise specified in a covered agreement; or

2 (iii) the aggregate amount of reinsurance recoverable on paid losses
3 that are not in dispute, but are overdue by 90 days or more, exceeds
4 \$50,000,000, or as otherwise specified in a covered agreement.

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

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

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

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

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

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

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

1 insurance commissioners in satisfaction of the requirements of paragraph
2 (3).

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

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

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

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

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

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

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

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

1 requirements as set out in this subsection; and

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

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

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

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

21 (1) Pursuant to K.S.A. 40-221a(b), and amendments thereto, the
22 commissioner shall allow a reduction from liability for reinsurance ceded
23 by a domestic insurer to an assuming insurer not meeting the requirements
24 of K.S.A. 40-221a(a), and amendments thereto, in an amount not
25 exceeding the liabilities carried by the ceding insurer. The reduction shall
26 be in the amount of funds held by or on behalf of the ceding insurer,
27 including funds held in trust for the exclusive benefit of the ceding insurer,
28 under a reinsurance contract with such assuming insurer as security for the
29 payment of obligations under the reinsurance contract. The security shall
30 be held in the United States subject to withdrawal solely by, and under the
31 exclusive control of, the ceding insurer or, in the case of a trust, held in a
32 qualified United States financial institution, as defined in K.S.A. 40-
33 221a(c)(2), and amendments thereto. This security may be in the form of
34 any of the following:

35 (A) Cash;

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

40 (C) clean, irrevocable, unconditional and "evergreen" letters of credit
41 issued or confirmed by a qualified United States institution, as defined in
42 K.S.A. 40-221a(c), and amendments thereto, effective no later than
43 December 31 of the year for which filing is being made, and in the

1 possession of, or in trust for, the ceding insurer on or before the filing date
2 of its annual statement. Letters of credit meeting applicable standards of
3 issuer acceptability as of the dates of their issuance, or confirmation, shall,
4 notwithstanding the issuing, or confirming, institution's subsequent failure
5 to meet applicable standards of issuer acceptability, continue to be
6 acceptable as security until their expiration, extension, renewal,
7 modification or amendment, whichever occurs first; or

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

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

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

14 (1) As used in this subsection:

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

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

25 (C) "Obligations" means:

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

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

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

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

32 (2) *Required conditions.*

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

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

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

40 (D) The trust agreement shall provide that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 insurer, to the owners of policies reinsured under the reinsurance
2 agreement on account of cancellations of the policies; and

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

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

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

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

32 (3) *Permitted conditions.*

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

42 (B) The grantor may have the full and unqualified right to vote any
43 shares of stock in the trust account and to receive from time to time

1 payments of any dividends or interest upon any shares of stock or
2 obligations included in the trust account. Any interest or dividends shall be
3 either forwarded promptly upon receipt to the grantor or deposited in a
4 separate account established in the grantor's name.

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

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

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

20 (4) *Additional conditions applicable to reinsurance agreements.*

21 (A) A reinsurance agreement may contain provisions that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (b) court or arbitration costs;

33 (c) attorney's fees; and

34 (d) any other reasonable expenses.

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

1 that the trust account was established to secure.

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

6 (1) *Letters of credit qualified under subsection (j)(1).*

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

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

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

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

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

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

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

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

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

18 (8) *Reinsurance agreement provisions.*

19 (A) The reinsurance agreement in conjunction with which the letter of
20 credit is obtained may contain provisions that:

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

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

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

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

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

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

40 (b) where the letter of credit will expire without renewal or be
41 reduced or replaced by a letter of credit for a reduced amount and where
42 the assuming insurer's entire obligations under the reinsurance agreement
43 remain unliquidated and undischarged 10 days prior to the termination

1 date, to withdraw amounts equal to the assuming insurer's share of the
2 liabilities, to the extent that the liabilities have not yet been funded by the
3 assuming insurer and exceed the amount of any reduced or replacement
4 letter of credit, and deposit those amounts in a separate account in the
5 name of the ceding insurer in a qualified United States financial institution
6 apart from its general assets, in trust for such uses and purposes specified
7 in paragraph (8)(A)(ii)(a) as may remain after withdrawal and for any
8 period after the termination date; and

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

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

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

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

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

23 (n) *Reinsurance contract.* Credit will not be granted, nor an asset or
24 reduction from liability allowed, to a ceding insurer for reinsurance
25 effected with assuming insurers meeting the requirements of subsection
26 (c), (d), (e), (f), (g), (h), or (j) or otherwise in compliance with K.S.A. 40-
27 221a(a), and amendments thereto, after the adoption of this section unless
28 the reinsurance agreement:

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

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

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

43 Sec. 2. K.S.A. 2019 Supp. 40-221a is hereby amended to read as

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

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

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

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

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

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

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

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

40 (3) (A) Credit shall be allowed when the reinsurance is ceded to an
41 assuming insurer that is domiciled in, or in the case of a United States
42 branch of an alien assuming insurer is entered through, a state that
43 employs standards regarding credit for reinsurance substantially similar to

1 those applicable under this statute and the assuming insurer or United
2 States branch of an alien assuming insurer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (b) The incorporated members of the group shall not be engaged in
43 any business other than underwriting as a member of the group and shall

1 be subject to the same level of regulation and solvency control by the
2 group's domiciliary regulator as are the unincorporated members of the
3 group; and

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

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

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

16 (b) maintain an aggregate policyholders' surplus of at least
17 \$10,000,000,000;

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

22 (d) in addition, maintain a joint trusteed surplus of which
23 \$100,000,000 shall be held jointly for the benefit of United States
24 domiciled ceding insurers of any member of the group as additional
25 security for these liabilities; and

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

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

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

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

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

43 (iii) maintain financial strength ratings from two or more rating

1 agencies deemed acceptable by the commissioner pursuant to regulation;

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

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

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

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

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

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

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

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

39 (i) In order to determine whether the domiciliary jurisdiction of a
40 ~~non-United States~~ *non-U.S.* assuming insurer is eligible to be recognized
41 as a qualified jurisdiction, the commissioner shall evaluate the
42 appropriateness and effectiveness of the reinsurance supervisory system of
43 the jurisdiction, both initially and on an ongoing basis, and consider the

1 rights, benefits and the extent of reciprocal recognition afforded by the
2 ~~non-United States~~ *non-U.S.* jurisdiction to reinsurers licensed and
3 domiciled in the United States. In order to be recognized as a qualified
4 jurisdiction, a jurisdiction must agree to share information and cooperate
5 with the commissioner with respect to all certified reinsurers domiciled
6 within that jurisdiction. A jurisdiction shall not be recognized as a
7 qualified jurisdiction if the commissioner has determined that the
8 jurisdiction does not adequately and promptly enforce final United States
9 judgments and arbitration awards. Additional factors may be considered in
10 the discretion of the commissioner.

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

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

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

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

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

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

40 (ii) If a certified reinsurer maintains a trust to fully secure its
41 obligations subject to subsection (a)(4), and chooses to secure its
42 obligations incurred as a certified reinsurer in the form of a multi-
43 beneficiary trust, the certified reinsurer shall maintain separate trust

1 accounts for its obligations incurred under reinsurance agreements issued
2 or renewed as a certified reinsurer with reduced security as permitted by
3 this subsection or comparable laws of other United States jurisdictions and
4 for its obligations subject to subsection (a)(4). It shall be a condition to the
5 grant of certification under subsection (a)(5) that the certified reinsurer
6 shall have bound itself, by the language of the trust and agreement with the
7 commissioner who has principal regulatory oversight of each such trust
8 account, to fund, upon termination of any such trust account, any
9 deficiency of any other such trust account out of the remaining surplus of
10 the terminated trust account.

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

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

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

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

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

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

38 (G) A certified reinsurer that ceases to assume new business in this
39 state may request to maintain the reinsurer's certification in inactive status
40 in order to continue to qualify for a reduction in amount of security
41 required for the reinsurer's in force business. An inactive certified reinsurer
42 shall continue to comply with all applicable requirements of this
43 subsection, and the commissioner shall assign a rating that takes into

1 account, if relevant, the reasons why the reinsurer is not assuming new
2 business.

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

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

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

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

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

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

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

43 (iv) *The assuming insurer shall agree and provide adequate*

1 *assurance to the commissioner, in a form specified by the commissioner, as*
2 *follows:*

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

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

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

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

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

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

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

43 *(vii) The assuming insurer's supervisory authority must confirm to*

1 *the commissioner on an annual basis, as of the preceding December 31 or*
2 *at the annual date otherwise statutorily reported to the reciprocal*
3 *jurisdiction, that the assuming insurer complies with the requirements set*
4 *forth in subsection (a)(6)(A)(ii) or (iii).*

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

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

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

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

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

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

42 *(i) While an assuming insurer's eligibility is suspended, no*
43 *reinsurance agreement issued, amended or renewed after the effective date*

1 *of the suspension qualifies for credit except to the extent that the assuming*
2 *insurer's obligations under the contract are secured in accordance with*
3 *subsection (b).*

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

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

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

20 *(G) Credit may be taken under this subsection only for reinsurance*
21 *agreements entered into, amended or renewed on or after July 1, 2020,*
22 *and only with respect to losses incurred and reserves reported on or after*
23 *the later of the date on which the assuming insurer has met all eligibility*
24 *requirements pursuant to subsection (a)(6)(A) herein, or the effective date*
25 *of the new reinsurance agreement, amendment or renewal.*

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

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

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

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

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

41 ~~*(7)(8)*~~ *If the assuming insurer is not licensed, accredited or certified to*
42 *transact insurance or reinsurance in this state, the credit permitted by*
43 *subsections (a)(3) and (a)(4) of this section shall not be allowed, unless the*

1 assuming insurer agrees in the reinsurance agreement to do all of the
2 following:

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

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

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

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

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

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

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

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

1 ~~(9)~~(10) Credit for reinsurance ceded to a certified reinsurer is limited
2 to reinsurance contracts entered or renewed on or after the effective date of
3 the certification of the assuming insurer by the commissioner.

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

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

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

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

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

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

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

40 (B) A domestic ceding insurer shall take steps to diversify its
41 reinsurance program. A domestic ceding insurer shall notify the
42 commissioner within 30 days after ceding to any single assuming insurer,
43 or group of affiliated assuming insurers, more than 20% of the ceding

1 insurer's gross written premium in the prior calendar year, or after the
2 domestic ceding insurer has determined that the reinsurance ceded to any
3 single assuming insurer, or group of affiliated assuming insurers, is likely
4 to exceed this limit. The notification shall demonstrate that the exposure is
5 safely managed by the domestic ceding insurer.

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

17 (1) Cash;

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

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

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

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

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

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

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

1 companies; and

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

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

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

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

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

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

22 Sec. 3. K.S.A. 2019 Supp. 40-221a is hereby repealed.

23 Sec. 4. This act shall take effect and be in force from and after its
24 publication in the statute book.