

## **Credit for Reinsurance Model Regulation; Amendments to Insurance-related Acts, Health Care Stabilization Fund Law; Risk-based Capital Instructions; House Sub. for SB 78**

**House Sub. for SB 78** amends several provisions in the Insurance Code and codifies the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Regulation (Model Regulation) into statute. Amendments to the Insurance Code pertain to credit for reinsurance, service contracts, surplus lines insurance, the Standard Nonforfeiture Law for Individual Deferred Annuities (Standard Nonforfeiture Law), the Utilization Review Organization Act and oversight of utilization review organizations, and risk retention groups. The bill also amends the Insurance Company Holding Act, the Professional Employer Organization Registration Act, the effective date for the risk-based capital instructions promulgated by the NAIC, and certain coverage and oversight requirements in the Health Care Provider Insurance Availability Act.

The bill also repeals the Automobile Club Services Act and a statute relating to the power of the Commissioner of Insurance (Commissioner) to examine and investigate into the affairs of persons engaged in the business of insurance to determine whether any unfair method of competition or unfair or deceptive act or practice has occurred (KSA 40-2405).

### ***Codification of NAIC Credit for Reinsurance Model Regulation***

[*Note:* Reinsurance is often referred to as “insurance for insurance companies” and serves as a contract of indemnity between a reinsurer and insurer. In this contractual arrangement, the insurance company (termed the “cedent” or “ceding insurer”) transfers the risk to the reinsurer, which assumes some or all of the policies issued by the ceding insurer.]

#### *Purpose*

The stated purpose of the Model Regulation is that the actions and information required are necessary and appropriate in the public interest and for the protection of the ceding insurers in Kansas.

#### *Severability*

If any provision in the Model Regulation, or the application of the provision to any person or circumstance, is found to be invalid, the remainder of the act, or the application of the provision to persons or circumstances other than those to which it is held invalid, is not affected.

#### *Credit for Reinsurance—Reinsurer Licensed in Kansas*

Pursuant to the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for the reinsurance ceded by a domestic insurer to an assuming insurer licensed in Kansas as of any date on which statutory financial statement credit for reinsurance is claimed.

### *Credit for Reinsurance—Accredited Reinsurers*

Pursuant to the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer accredited as a reinsurer in Kansas as of the date on which statutory financial statement credit for reinsurance is claimed. The Model Regulation sets out the filing requirements of an accredited reinsurer and the requirement to maintain a surplus with regard to policyholders of not less than \$20.0 million or to obtain approval of the Commissioner based on a finding the accredited reinsurer has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

If the Commissioner determines the assuming insurer failed to meet or maintain any of the above qualifications, the Commissioner is permitted to suspend or revoke the accreditation, upon written notice and opportunity for hearing. If an assuming insurer's accreditation is revoked, or if the reinsurance is ceded while the assuming insurer's accreditation is under suspension, a domestic ceding insurer is not allowed credit.

### *Credit for Reinsurance—Reinsurer Domiciled in Another State*

Pursuant to the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of a date on which statutory financial statement credit for reinsurance is claimed:

- Is domiciled in or, in the case of a U.S. branch of an alien assuming insurer, is entered through a state with credit for reinsurance standards similar to those applicable in Kansas;
- Maintains a surplus as previously described; and
- Files a properly executed form with the Commissioner as evidence of submission to this state's authority to examine its books and records.

The provisions relating to the surplus do not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system. The term "substantially similar," as referenced in this section, means credit for reinsurance standards the Commissioner determines are equal to or exceed the standards of the Kansas credit for reinsurance statute and those of this section.

### *Credit for Reinsurance—Reinsurers Maintaining Trust Funds*

In accordance with the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed, and for as long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed by the Model Regulation in a qualified U.S. financial institution for the payment of the valid claims of its U.S.-domiciled ceding insurers. The assuming insurer is required to report annually to the Commissioner substantially the same information required to be reported on the NAIC annual statement form by licensed insurers, to allow the Commissioner to determine the sufficiency of the trust fund.

The Model Regulation sets out the trust fund requirements applicable to the following categories of assuming insurers: a single assuming insurer; an assuming insurer that has permanently discontinued underwriting new business secured by the trust for at least three full years; a group including incorporated and individual unincorporated underwriters; and a group of incorporated insurers under common administration whose members possess aggregate policyholders surplus of \$10.0 billion, calculated and reported as outlined in the bill, and that has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation.

The Model Regulation provides that credit for reinsurance is not to be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who has accepted responsibility for regulatory oversight of the trust. The Model Regulation requires the form of the trust and any trust amendments be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. Provisions to be included in the trust instrument are outlined.

If the trust fund is inadequate because it contains an amount less than required or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee is required to comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. Such assets are to be distributed according to claims filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies. Trust assets not necessary to satisfy the claims of U.S. beneficiaries of the trust are returned to the trustee for distribution according to the trust agreement. The grantor is required to waive any right otherwise available to it under U.S. law that is consistent with this provision.

The term “liabilities” means the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S.-domiciled insurers, excluding liabilities that are otherwise secured by acceptable means. The liabilities included for business ceded by domestic insurers authorized to write accident and health and property and casualty insurance and for business ceded by domestic insurers authorized to write life, health, and annuity insurance are as listed in the Model Regulation.

The Model Regulation addresses the valuation of assets deposited in trusts established pursuant to the Kansas credit for reinsurance statute, the nature of the trust assets allowed, the limitations on foreign investments and securities denominated in foreign currencies in the trust, and restrictions on allowed trust investments. Requirements for a mortgage-related security are specified. The terms “mortgage-related security” and “promissory note” are defined.

**Equity interests.** The Model Regulation addresses permissible equity interests involving the following: investments in common shares or partnership interests of a solvent U.S. institution, if certain requirements are met; investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if certain requirements are met; an investment in or loan upon any one institution’s outstanding equity interest not exceeding a specified percentage of the assets of the trust; and obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated “A,” or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the NAIC.

**Investment companies.** The Model Regulation provides that securities of an investment company registered pursuant to the Investment Company Act of 1940 are permissible investments if the investment company meets certain investment requirements. The bill prohibits investments made by a trust in investment companies from exceeding certain limitations.

**Letters of credit.** A letter of credit qualifies as an asset of the trust only if:

- The trustee has the right and obligation pursuant to the deed of trust or some other binding agreement approved by the Commissioner to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced; and
- The trust agreement provides that the trustee is liable for its negligence, willful misconduct, or lack of good faith. The failure to draw against the letter of credit when such draw is required is deemed to be negligence or willful misconduct.

#### *Credit for Reinsurance—Certified Insurers*

Pursuant to the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in Kansas at all times for which the statutory financial statement credit for reinsurance is claimed. The credit allowed is based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified insurer by the Commissioner. The bill requires the security to be in a form consistent with requirements of the Kansas credit for reinsurance statute. The amount of security required in order for full credit to be allowed must correspond with the requirements outlined.

**Certification procedure.** The process for certification requires the posting of the application for certification on the Kansas Insurance Department (Department) website, including instructions on how members of the public may respond to the application, the timing of the Commissioner’s final action on the application, and written notice to the assuming insurer

that made the application and has been approved as a certified reinsurer that contains the rating assigned to the certified reinsurer. The Commissioner is required to publish a list of all certified reinsurers and their ratings. To be eligible for certification, the assuming insurer is required to meet certain requirements, as outlined. Each certified reinsurer is rated on a legal entity basis, with due consideration being given to the group rating where appropriate. However, an association, including incorporated and individual unincorporated underwriters, that has been approved to do business as a single certified reinsurer is permitted to be evaluated on the basis of its group rating. Multiple factors allowed to be considered as part of the evaluation process are described.

Based on the analysis of one of the factors conducted pertaining to a certified reinsurer's reputation for prompt payment of claims, the Commissioner is permitted to make appropriate adjustments to the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers. If certain conditions exist, the Commissioner is required, at a minimum, to increase the security the certified insurer is required to post by one rating level.

The assuming insurer is required to submit a specified form as evidence of its submission to the jurisdiction of the State of Kansas, appointment of the Commissioner as an agent for service of process in Kansas, and agreement to provide security for 100 percent of the assuming insurer's liabilities attributable to the reinsurance ceded by U.S. ceding insurers if the assuming insurer resists enforcement of a final U.S. judgment. The Commissioner is prohibited from certifying any assuming insurer that is domiciled in a jurisdiction the Commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

The certified reinsurer is required to agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application and on an ongoing basis. Information submitted by certified reinsurers that is not public information subject to disclosure is exempted from disclosure under the Kansas Open Records Act and is withheld from public disclosure. The provisions providing for the confidentiality of public records expire on July 1, 2026, unless the Legislature reviews and continues such provisions. The applicable information filing requirements are described.

**Qualified jurisdictions.** If the Commissioner determines, upon conducting an evaluation with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Commissioner is required to publish notice and evidence of such recognition. The Commissioner is permitted to establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

The Commissioner is required to evaluate the reinsurance supervisory system of a non-U.S. jurisdiction, both initially and on an ongoing basis, to determine whether the domiciliary jurisdiction of the non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction and to consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the United States. The Commissioner is required to determine the appropriate approach for evaluating the qualifications of such jurisdictions and create and publish a list of jurisdictions whose reinsurers the Commissioner is allowed to approve as eligible for certification. A qualified jurisdiction is required to agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled in that jurisdiction. A list of additional factors to be considered in determining whether to recognize a qualified jurisdiction is included.

In determining qualified jurisdictions, the Commissioner is required to consider the list of qualified jurisdictions published through the NAIC committee process. If the Commissioner approves a jurisdiction as qualified that is not on the list of qualified jurisdictions, the Commissioner is required to provide thoroughly documented justification with respect to the criteria provided in the list of other factors to be considered in making that determination. U.S. jurisdictions meeting the requirements for accreditation under the NAIC standards and accreditation program are recognized as qualified jurisdictions.

**Recognition of certification issued by an NAIC-accredited jurisdiction.** The Commissioner has the discretion to defer to the certification of an applicant who has been certified as a reinsurer in an NAIC-accredited jurisdiction and to defer to the rating assigned by that jurisdiction, if the assuming insurer completes the requisite form prescribed and adopted by the NAIC and the Commissioner and provides such additional information required by the Commissioner. The assuming insurer is considered to be a certified insurer in Kansas. A change in the certified insurer's status or rating in the other jurisdiction applies automatically in Kansas as of the date it takes effect in the other jurisdiction. The requirement for notification by the certified insurer of any change in status or rating, the Commissioner's authority to withdraw recognition of the other jurisdiction's rating and certification at any time, and the good standing of the certified insurer's certification absent suspension or revocation by the Commissioner are described.

**Mandatory funding clause.** The bill requires reinsurance contracts entered into or renewed to include a proper funding clause that requires the certified insurer to provide and maintain security in an amount sufficient to avoid having any financial statement penalty imposed on the ceding insurer for the reinsurance ceded to the certified insurer.

The Commissioner is required to comply with all reporting and notification requirements the NAIC may establish with respect to certified insurers and qualified jurisdictions.

#### *Credit for Reinsurance—Reciprocal Jurisdictions*

In accordance with the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and meets other requirements outlined in the Model Regulation.

"Reciprocal jurisdiction" is defined as a jurisdiction designated by the Commissioner that meets one of three requirements outlined in the bill.

The bill requires credit to be allowed when the reinsurance is ceded from an insurer domiciled in Kansas to an assuming insurer that meets the following conditions:

- Is licensed to transact reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction;
- Has and maintains on an ongoing basis minimum capital and surplus, or its equivalent, calculated in the manner described, in the requisite amounts;

- Has and maintains on an ongoing basis a minimum solvency or capital ratio, as applicable, as specified in the bill;
- Agrees to and provides assurance in the required form of its agreement to:
  - Provide prompt written notice and explanation if it falls below certain minimum requirements or if any regulatory action is taken against it for serious noncompliance with applicable law;
  - Consent in writing to the jurisdiction of the courts of Kansas and to the appointment of the Commissioner as agent for the service of process;
  - Consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained;
  - Provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded, as required by a provision in each reinsurance agreement, if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award;
  - Confirm that it is not presently participating in any solvent scheme of arrangement that involves Kansas ceding insurers and agrees to notify the ceding insurer and the Commissioner and to provide 100 percent security to the ceding insurer consistent with the terms of the scheme, if the assuming insurer enters into such a solvent scheme of arrangement; and
  - Agree in writing to meet the applicable information filing requirements;
- Provides, if requested by the Commissioner, on behalf of itself and any legal predecessors, the documentation specified to the Commissioner;
- Maintains a practice of prompt payment of claims under reinsurance agreements. The criteria that are evidence of the lack of prompt payment are enumerated;
- Complies with the requirements of having and maintaining, on an ongoing basis, minimum capital and surplus, or its equivalent, and a minimum solvency or capital ratio, as applicable, as confirmed by the assuming insurer's supervisory authority; and
- Nothing precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

The Commissioner is required to timely create and publish a list of reciprocal jurisdictions. A list of reciprocal jurisdictions is published through the NAIC's committee process. The Commissioner's list is required to include any reciprocal jurisdiction and consider any other reciprocal jurisdiction included in the NAIC list. The Commissioner is allowed to approve a

jurisdiction not included in the NAIC's list of reciprocal jurisdictions as provided by applicable law or regulation, or in accordance with criteria published through the NAIC committee process.

The Commissioner is allowed to remove a jurisdiction from the list of reciprocal jurisdictions upon determination the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law or regulation, or in accordance with a process published through the NAIC committee process, except the Commissioner is prohibited from removing from the list of reciprocal jurisdictions the following: a non-U.S. jurisdiction subject to an in-force covered agreement with the United States, each within its legal authority, or in the case of a covered agreement between the United States and the European Union, is a member state of the European Union; and a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction is allowed.

The Commissioner is required to timely create and publish a list of assuming insurers that have satisfied the conditions set forth and to which cessions shall be granted credit. If an NAIC-accredited jurisdiction determines the conditions for a qualified jurisdiction have been met, the Commissioner has the discretion to defer to that jurisdiction's determination and add such assuming insurer to the list of assuming insurers to which cessions are granted credit. The Commissioner is allowed to accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC in satisfaction of the requirements for a qualified jurisdiction.

An assuming insurer is required to submit the required properly executed form and additional information as the Commissioner may require when requesting that the Commissioner defer to another NAIC-accredited jurisdiction's determination. A state that has received such a request is required to notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

If the Commissioner determines an assuming insurer no longer meets one or more of the requirements, the Commissioner is allowed to revoke or suspend the eligibility of the assuming insurer for recognition. While eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit, except to the extent the assuming insurer's obligations under the contract are secured. If eligibility is revoked, credit is not to be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions of the section on asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the necessary requirements.

Before denying statement credit or imposing a requirement to post security for an assuming insurer that no longer meets one or more of the requirements or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner is required to:

- Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the required conditions; and



- Provide the assuming insurer 30 days to submit a plan and 90 days to remedy the defect, unless a shorter period is needed for policyholder and other consumer protection. If after the 90 days, the Commissioner determines no or insufficient action was taken, the Commissioner may impose any of the requirements specified on the assuming insurer and provide a written explanation to the assuming insurer of any requirements in the bill.

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

#### *Credit for Reinsurance Required by Law*

The Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of the Kansas credit for reinsurance statute, but only as it relates to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction. “Jurisdiction” is defined as a state, district, or territory of the United States and any lawful national government.

#### *Asset or Reduction from Liability for Reinsurance—Unauthorized Assuming Insurer*

The Commissioner is required to allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements of the Kansas credit for reinsurance statute in an amount not exceeding the liabilities carried by the ceding insurer. The calculation of the reduction, where the security is held, who may withdraw the security, and the allowed forms of security are as outlined in the Model Regulation.

An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer is allowed only when certain requirements are satisfied.

#### *Required Conditions of Trust Agreements*

This section defines “beneficiary,” “grantor,” and “obligations” and outlines the required conditions for the trust agreements. The trust agreement is entered into between the beneficiary, the grantor, and a trustee that shall be a qualified U.S. financial institution. The trust agreement creates a trust account into which assets are deposited. All assets in the trust account are held by the trustee at the trustee’s office in the United States. The bill specifies required provisions of the trust agreement, including the responsibilities of the trustee, the laws the agreement is subject to and governed by, and the required notice prior to termination of the trust.

Notwithstanding certain provisions of the bill, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement is allowed to provide that the ceding insurer undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the specific purposes outlined in the bill.

Notwithstanding other provisions, when a trust agreement is established to meet the certain requirements pertaining to asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer that does not meet the credit for reinsurance requirements in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement is allowed to provide that the ceding insurer undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the purposes specified.

The bill requires the reinsurance agreement or the trust agreement to stipulate how the assets deposited in the trust are valued and what it would consist of and limitations on the types of investments. The trust agreement may further specify the types of investments to be deposited.

#### *Permitted Conditions of a Trust Agreement*

The Model Regulation outlines the permitted conditions in a trust agreement, including the terms for resignation or removal of a trustee, the grantor's rights with respect to voting any shares of stock in the trust account and receiving payment of dividends and interest from time to time, the authorities of a trustee with regard to the funds in the account, the transfer of trust assets by the beneficiary, and the delivery of assets to the grantor upon termination of the trust account.

#### *Additional Conditions Applicable to Reinsurance Agreements*

The bill authorizes certain specified provisions in a reinsurance agreement. One such provision allows the assuming insurer to execute assignments or endorsements in blank or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments so the ceding insurer, or the trustee upon direction of the ceding insurer, is able whenever necessary to negotiate these assets without consent or signature from the assuming insurer or any other entity.

#### *Financial Reporting*

A trust agreement is allowed to be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Department when established on or before the date of filing of the financial statement of the ceding insurer. The reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time. However, such reduction is not permitted to be greater than the specific obligations under the reinsurance agreement that the trust account was established to secure. The failure of a trust agreement to specifically identify the beneficiary is not to be construed to affect any actions or rights the Commissioner is allowed to take or possess pursuant to provisions of state law.

### *Letters of Credit Qualified under Certain Conditions*

The Model Regulation outlines the requirements of the letter of credit pertaining to a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements of the Kansas credit for reinsurance statute.

### *Reinsurance Agreement Provisions*

The provisions that are allowed in a reinsurance agreement with which the letter of credit is obtained include requiring the assuming insurer to provide letters of credit to the ceding insurer and specifying what they are to cover and stipulating the letter of credit may be drawn upon at any time and used by the ceding insurer for its successors in interest only for certain enumerated reasons. However, the enumerated reasons do not preclude the ceding insurer and assuming insurer from providing for an interest payment, at a rate not exceeding the prime rate of interest on certain amounts or the return of any amounts drawn down on the letters of credit in excess of the actual amounts required above or any amounts that are subsequently determined not to be due.

### *Other Security*

The Model Regulation allows a ceding insurer to take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

### *Reinsurance Contract*

Under the Model Regulation, credit is not to be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting specific requirements or otherwise in compliance with Kansas credit for reinsurance statute, after the adoption of this section, unless the reinsurance agreement includes a proper insolvency clause; a provision whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent for service of process, and has agreed to abide by the final decision of the court or panel; and a proper reinsurance intermediary clause, if applicable, that stipulates the credit risk for the intermediary is carried by the assuming insurer.

### ***Service Contracts; Repeal of the Automobile Club Services Act***

The bill amends the definition of “service contract” within the general provisions of the Insurance Code to specify the term does not include an automobile club service contract. The bill defines the term “automobile club service contract” as:

- A service contract that provides—in consideration of dues, assessments, or periodic payments of money—promises to assist in matters relating to travel and

the operation, use, and maintenance of an automobile in the supply of features or services or reimbursement thereof, which may include:

- Such services as community traffic safety services, travel and touring service, theft or reward service, map service, towing service, emergency road service, bail bond service, and legal fee reimbursement service in the defense of traffic offenses, none of which enumerated features or services, if provided by the promisor itself, shall be subject to the insurance laws of this state;
- The purchase of accidental injury and death benefits insurance coverage issued, as provided by applicable statutes, by an insurance company authorized to do business in Kansas; or
- Such other features or services not deemed by the Commissioner to constitute the business of insurance.

Prior law applied the exclusion to automobile club service contracts as defined in the Automobile Club Services Act. The bill repeals the Automobile Club Services Act, which required persons providing automobile club services to register with the Commissioner and pay an annual licensing fee.

### ***Credit for Reinsurance Statute***

The bill adds another condition under which a domestic ceding insurer may be permitted a credit for reinsurance, as either an asset or a reduction from liability, on account of reinsurance ceded to an assuming insurer.

### ***Assuming Insurer Requirements***

The added condition allows credit for reinsurance if the assuming insurer meets each of the following conditions:

- Has its head office, or is domiciled, in, as applicable, and is licensed in a reciprocal jurisdiction. A reciprocal jurisdiction is a jurisdiction that meets one of the following requirements:
  - Is a non-U.S. jurisdiction subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member of the European Union. A covered agreement is defined as an agreement entered into pursuant to provisions of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act currently in effect or in a period of provisional application and addresses the elimination, under specific conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in Kansas or for allowing the ceding insurer to recognize credit for reinsurance;

- Is a U.S. jurisdiction that meets the requirements of accreditation under the NAIC Financial Standards and Accreditation Program; or
- Is a qualified jurisdiction, as determined by the Commissioner, that is not otherwise described in the two previous options and meets certain additional requirements consistent with the terms and conditions of in-force covered agreements, as specified by the Commissioner;
- Has and maintains, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount set by the Commissioner. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it is required to have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts set by the Commissioner;
- Has and maintains, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as set by the Commissioner. If the assuming insurer is an association, including incorporated or individual unincorporated underwriters, it is required to have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed;
- Agrees and provides adequate assurance to the Commissioner, in a form specified by the Commissioner, as follows:
  - The assuming insurer is required to provide the Commissioner with prompt written notice and explanation if it falls below the minimum requirements set for capital and surplus or solvency or capital ratio, or if any regulatory action is taken against the assuming insurer for serious non-compliance with applicable law;
  - The assuming insurer is required to consent in writing to the jurisdiction of the Kansas courts and to the appointment of the Commissioner as the assuming insurer's agent for service of process. The Commissioner may require the consent for service of process be provided to the Commissioner and included in each reinsurance agreement. This provision does not limit or alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;
  - The assuming insurer is required to consent in writing to pay all final judgments, whenever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;
  - Each reinsurance agreement is required to include a provision requiring the assuming insurer to provide security equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final

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

- The assuming insurer is required to confirm it is not presently participating in any solvent scheme of arrangement that involves Kansas ceding insurers, agree to notify the ceding insurer and the Commissioner, and provide security equal to 100 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. The security is required to be in a form consistent with the provisions allowing for credit when reinsurance is ceded to the Commissioner-certified assuming insurer that has secured its obligations as required and for limitation on asset or reduction from liability for reinsurance not meeting the requirements for credit for reinsurance and as specified by the Commissioner;
- If requested by the Commissioner, the assuming insurer or its legal successor provides to the Commissioner, on behalf of itself and any legal predecessors, certain documentation specified by the Commissioner;
- Maintains a practice of prompt payment of claims under reinsurance agreements; and
- The assuming insurer's supervisory authority confirms to the Commissioner on an annual basis that the assuming insurer complies with the requirements for having and maintaining minimum capital and surplus or minimum solvency or capital ratio.

The assuming insurer is not precluded from voluntarily providing information to the Commissioner.

#### *List of Reciprocal Jurisdictions*

The following criteria apply to the list of reciprocal jurisdictions created by the Commissioner:

- A list of reciprocal jurisdictions is to be published through the NAIC committee process. The Commissioner's list must include any reciprocal jurisdiction, as defined in the bill, and the Commissioner is required to consider any other reciprocal jurisdiction included in the NAIC list. The Commissioner is permitted to approve a jurisdiction that does not appear on the NAIC reciprocal jurisdictions list in accordance with criteria developed by the Commissioner; and
- The Commissioner is permitted to remove a jurisdiction from the list of reciprocal jurisdictions if the Commissioner determines, with a process set by the Commissioner, that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction. However, the Commissioner is prohibited from removing the following from the list of reciprocal jurisdictions:

- A non-U.S. jurisdiction subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member of the European Union; and
- A U.S. jurisdiction that meets the requirements of accreditation under the NAIC Financial Standards and Accreditation Program.

If a reciprocal jurisdiction is removed from the list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction is permitted, if otherwise permitted in the credit for reinsurance statute.

### *List of Assuming Insurers*

The Commissioner is required to create and publish a list of assuming insurers that have satisfied the conditions required of them and to which cessions would be required to be granted credit. The Commissioner is permitted to add an assuming insurer to such list if an NAIC-accredited jurisdiction has added such assuming insurer to such a list or, if on initial eligibility, the assuming insurer submits the required information to the Commissioner agreeing and providing adequate assurance and complies with any other requirements the Commissioner is permitted to impose that do not conflict with an applicable covered agreement.

### *Revocation or Suspension of Eligibility of an Assuming Insurer*

The Commissioner is permitted to revoke or suspend the eligibility for recognition of an assuming insurer determined by the Commissioner to no longer meet one or more of the requirements pertaining to assuming insurers.

While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the date of the suspension qualifies for credit, except to the extent the assuming insurer's obligations under the contract are secured in accordance with the section on the asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements for credit for reinsurance.

If an assuming insurer's eligibility is revoked, no credit for reinsurance is to be granted after the effective date of revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions in the section on the asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements for credit for reinsurance.

### *Assuming Insurer Requirement to Post Security*

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

### *Agreement on Security Requirements*

The capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in the reinsurance agreement is not limited or altered, except when expressly prohibited by the credit for reinsurance statute or other applicable law or regulation.

### *Limitation on Credits for Reinsurance*

Credit is permitted only for reinsurance agreements entered into, amended, or renewed on or after July 1, 2021, and only with respect to losses incurred and reserves reported on, or after the latter of the date on which the assuming insurer has met all eligibility requirements pursuant to the section on condition under which credit for reinsurance is permitted or the effective date of the new reinsurance agreement, amendment, or renewal.

### *Ceding Insurer's Right to Credit for Reinsurance*

A ceding insurer's right to take credit for reinsurance is not altered or impaired, to the extent that credit is not available under the conditions to be met to qualify for credit, if the reinsurance qualifies for credit under any other applicable provision of the credit for reinsurance statute.

### *Limitations on an Assuming Insurer*

Nothing in the reinsurer requirements to allow credit for reinsurance authorizes an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement or to limit or alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

### ***Definitions, Surplus Lines Insurance***

The bill amends definitions associated with surplus lines insurance to update provisions within the definition of "exempt commercial purchaser." Former law required the minimum requirements for net worth, annual revenue, and annual budgeted expenditures on exempt commercial purchasers to be adjusted and published by the Commissioner through rules and regulations. The bill instead requires these adjusted amounts to be published in the *Kansas Register*.

### ***Risk-based Capital Instructions, National Association of Insurance Commissioners***

The bill amends the effective date specified in the Insurance Code for the risk-based capital (RBC) instructions promulgated by the NAIC for property and casualty companies and for life insurance companies from December 31, 2019, to December 31, 2020.



### ***Standard Nonforfeiture Law for Individual Deferred Annuities***

The bill amends the nonforfeiture rate used to calculate the minimum values of a paid-up annuity, cash surrender, or death benefit available under an annuity contract. The interest rate used in determining the minimum nonforfeiture rate amount is specified as an annual rate determined as the lesser of 3.0 percent per annum and the interest rate calculated as shown below:

- The five-year constant maturity rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest 1/20th of 1.0 percent, as specified in the contract no longer than 15 months prior to the annuity contract's issue date or redetermination date (no change);
- Reduced by 125 basis points (no change);
- Where the resulting interest rate is not less than 15 basis points or 0.15 percent (1.0 percent in prior law); and
- The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, must be stated in the annuity contract (no change).

### ***Utilization Review Organization Act***

The bill makes changes to the Utilization Review Organization Act as follows.

#### ***Certification and Conduct***

Under prior law, the Commissioner was required to adopt rules and regulations, with the advice of a utilization review advisory committee, establishing standards for the conduct of utilization review activities performed in Kansas or affecting residents in this state by utilization review organizations. The bill removes the requirement of using the advice of the advisory committee and adds activities affecting health care providers to the types of utilization review activities subject to the required rules and regulations establishing the standards for conduct.

#### ***Advisory Committee***

The bill removes requirements establishing the Utilization Review Advisory Committee. The bill maintains the listed exceptions to the Utilization Review Organization Act (e.g., utilization review of health care services, reviews conducted by insurance companies and plans, and certain medical programs).

#### ***Certification***

The bill amends requirements in this act pertaining to certification of utilization review activities. The bill specifies provisions of the Utilization Review Organization Act do not apply to

utilization review organizations accredited by and adhering to national utilization review standards approved by URAC, an independent, nonprofit accreditation entity, or other such utilization review organizations the Commissioner approves. Under prior law, these provisions did not apply to the American Accreditation Health Care Commission (replaced by the URAC in the bill); the utilization review organizations were subject to the recommendations of the advisory committee (the bill removes this committee from utilization review law).

## ***Insurance Holding Company Act***

### *Definitions*

The following definitions are added to the Insurance Holding Company Act:

- “Group-wide supervisor” means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the Commissioner under KSA 40-3318 to have sufficient significant contacts with the internationally active insurance group; and
- “Internationally active insurance group” means an insurance holding company that:
  - Includes an insurer registered under KSA 40-3305; and
  - Meets the following criteria: has premiums written in at least three countries; the percentage of gross premiums written outside the United States is at least 10.0 percent of the insurance holding company system’s total gross written premiums; and based on a three-year rolling average, the total assets of the insurance holding company system are at least \$50.0 billion or the total gross written premiums of the insurance company system are at least \$10.0 billion.

### *Notice of Divestiture of Controlling Interest*

With regard to transactions affecting control of domestic insurers, the bill requires any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, to file with the Commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The Commissioner is required to determine those instances in which each party seeking to divest or to acquire a controlling interest in an insurer is required to file for and obtain approval of the transaction. The bill requires the information regarding the proposed divestiture to remain confidential until the conclusion of the transaction, unless the Commissioner determines that confidential treatment of the information will interfere with enforcement. These requirements pertaining to the notice of proposed divestiture do not apply if a statement of intent to acquire control of a domestic insurer was filed with the Commissioner.

With respect to a transaction affecting control of a domestic insurer, the acquiring person is also required to file a preacquisition notification with the Commissioner containing the

information in the form and manner prescribed by the Commissioner through rules and regulations.

#### *Amendments or Modifications of Affiliate Agreements*

Amendments or modifications of affiliate agreements are included in the material transactions involving a domestic insurer and any person in such insurer's holding company system that cannot be entered into without written notification to the Commissioner within the time requirements set out in statute and which the Commissioner has not disapproved.

#### ***Required Health Care Provider Professional Liability Insurance Coverage; HCPIAA Amendments***

[*Note:* Professional liability insurance is medical malpractice or medical liability insurance and is defined in KSA 40-3401, in the Health Care Provider Insurance Availability Act (HCPIAA), as "insurance providing coverage for legal liability arising out of the performance of professional services rendered or that should have been rendered by a health care provider."]

The bill clarifies the current levels of professional liability insurance coverage required to be maintained by a health care provider under the HCPIAA continue in effect through December 31, 2021. As a condition of active licensure or other statutory authorization to render professional service as a health care provider in Kansas on and after January 1, 2022, each resident health care provider is required to maintain a policy of professional liability insurance approved by the Commissioner and issued by an insurer duly authorized to transact business in Kansas in which the limit of the insurer's liability is no less than \$500,000 per claim and subject to an annual aggregate of not less than \$1.5 million for all claims during the policy period. Self-insured health care providers and those health care providers to whom the current coverage requirements do not apply are exempt from this coverage limit.

#### ***Health Care Stabilization Fund Board of Governors Membership and Health Care Stabilization Fund Liability; HCPIAA***

##### *Board Membership*

The bill amends Board membership provisions to require at least two of the three members appointed by the Commissioner from a list of nominees submitted to the Commissioner by the Kansas Medical Society to be doctors of medicine who are licensed to practice medicine and surgery in Kansas.

##### *Liability of the HCSF*

The bill increases, from \$300,000 to \$500,000, the minimum amount of liability on the Health Care Stabilization Fund (HCSF), if the Fund is liable, for the HCSF to pay a judgment or settlement by making installment payments of \$500,000 or 10.0 percent of the judgment, whichever is greater.

## *Coverage Options*

Each health care provider subject to the HCPIAA must choose among HCSF coverage options. The three current HCSF coverage options remain available through December 31, 2021, and limit the HCSF liability with respect to judgments or settlements relating to injury or death arising from the rendering of or failure to render professional services from July 1, 1989, and prior to January 1, 2022.

On and after January 1, 2022, every health care provider is required to choose one of two HCSF coverage options limiting the HCSF liability for judgments or settlements relating to injury or death arising from the rendering of or failure to render professional services, as follows:

- \$500,000 for any one judgment or settlement against a health care provider, subject to an aggregate limit of \$1,500,000 for all judgments and settlements arising from all claims made in the fiscal year against such health care provider; or
- \$1.5 million for any one judgment or settlement against a health care provider, subject to an aggregate limit of \$4.5 million for all judgments and settlements arising from all claims made in the fiscal year against such health care provider.

**Captive insurers; qualification as a self-insurer.** The bill further specifies a medical care facility or health care facility deemed as a self-insurer may opt out of the coverage requirements, as long as such facility substantially meets the minimum coverage requirements created by the bill through coverage provided by the facility's captive insurance coverage.

**Excess coverage.** The bill specifies the Board shall have the authority to adjust certain coverage amounts needed to effectuate provisions of the HCPIAA, provided such minimum coverage is not less than \$1.0 million per claim and \$3.0 million in the aggregate.

### ***Liability of Insurer for HCSF-Covered Provider or Self-Insurer; HCPIAA***

The bill updates a provision limiting liability for a claim for personal injury or death arising out of the rendering of or failure to render professional services by such health care provider. The bill provides, for such claims, the insurer of a health care provider covered by the HCSF or self-insurer shall be liable only for the amount of basic coverage in effect on the date of the incident giving rise to the claim, which is subject to an annual aggregate amount of not less than three times the primary amount for all such claims against the health care provider.

### ***Notification Regarding Actions Filed for Personal Injury or Death Arising out of the Rendering of or Failure to Render Professional Services; HCPIAA***

The bill updates language regarding a plaintiff's service of a copy of a petition upon the Board to include certified mail, priority mail, commercial delivery service, or first-class mail and require such service within 30 calendar days from the filing of such petition.

### ***Certificate of Self-Insurance, Requirements on Certain Facilities; HCPIAA***

The bill modifies provisions pertaining to requirements on medical care or health care facilities certified as self-insurers. Those modifications:

- Increase, from \$100,000 to \$150,000, the aggregate annual insurance premium specified (one of two options for insurance coverage required for facilities obtaining a certificate of self-insurance); and
- Update criteria specified for the determination of the Board regarding qualification for a certificate of self-insurance to include any other factors the Board deems relevant and further specify:
  - Any applicant that owns and operates more than one medical care facility or more than one health care facility shall be deemed qualified by the Board, if such applicant is insured by a captive insurance company (as defined in KSA 40-4301) or under the laws of the state of domicile of any such captive insurance company.

### ***Claims Made for Incidents Occurring after January 1, 2022; HCPIAA***

The bill updates language referencing claims made against a resident or nonresident health care provider on and after July 1, 2014, to specify the minimum professional liability coverage policy limits associated with the HCSF liability are the limits in effect on the date of the incident giving rise to a claim.

The bill also specifies for claims made for incidents occurring on or after January 1, 2022, the aggregate HCSF liability for all judgments and settlements made in any fiscal year against a resident or nonresident inactive health care provider shall not exceed three times the basic coverage limit.

### ***Risk Retention Groups***

The bill amends a requirement placed on risk retention groups chartered in states other than Kansas that are seeking to do business in Kansas. Under continuing law, a risk retention group seeking to do business in this state is required to submit, among other things, a copy of the group's financial statement submitted to its state of domicile that contains a statement of opinion on loss and loss adjustment expense reserves. The bill removes a requirement that such statement is certified by an independent public accountant.

### ***Professional Employer Organization Registration Act***

The bill amends certain requirements placed on a registrant's application by:

- Extending, from 60 to 120 days, the time frame specified for the registrant's renewal and notification of the Commissioner of any changes in the information provided in the registrant's most recent registration or renewal; and

- Extending, from 60 to 120 days, the permissible time frame for the annual filing of the most recent audit by a Professional Employer Organization group.