

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 28**

As Amended by Senate Committee on  
Insurance

**Brief\***

SB 28 would codify the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Regulation (Model Regulation) into statute and amend the Kansas credit for reinsurance statute to add another condition under which a ceding insurer is permitted credit for reinsurance. The bill also would amend the Insurance Holding Company Act by adding definitions for “group-wide supervisor” and “internationally active insurance group,” requiring the filing with the Commissioner of Insurance (Commissioner) of a confidential notice of proposed divestiture by a controlling person of a domestic insurer and a preacquisition notice by the acquiring person, and adding amendments or modifications of affiliate agreements to transactions that may not be entered into without advance written notification to the Commissioner of the insurer’s intent to enter into such transaction. The bill also would make technical amendments.

***Codification of NAIC Credit for Reinsurance Model  
Regulation (New Section 1)***

[*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 would assume some or all of the policies issued by the ceding

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

insurer. This Supplemental Note reviews the Model Regulation, as follows.]

*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, would not be affected.

*Credit for Reinsurance—Reinsurer Licensed in Kansas*

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

*Credit for Reinsurance—Accredited Reinsurers*

Pursuant to the Kansas credit for reinsurance statute, the Commissioner would be 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 in which statutory financial statement credit for reinsurance is claimed. The Model Regulation would set out the filing requirements of an accredited reinsurer and the requirement to maintain a surplus with regard to policyholders of not less than \$20 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 would be permitted to suspend or revoke the accreditation, upon written notice and opportunity for hearing. If an assuming insurer's accreditation was revoked, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension, a domestic ceding insurer would not be allowed credit.

*Credit for Reinsurance—Reinsurer Domiciled in Another State*

Pursuant to the Kansas credit for reinsurance statute, the Commissioner would be 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 would 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, would mean 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 would be 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 would be 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 would set 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 billion, calculated and reported as outlined in the bill, and that has continuously transacted an insurance business outside the U.S. for at least three years immediately prior to making application for accreditation.

The Model Regulation would provide that credit for reinsurance would not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who has accepted responsibility for regulatory oversight of the trust.

The Model Regulation would require 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 would be as outlined in this subsection.

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 would be 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 would 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 would be returned to the trustee for distribution according to the trust agreement. The grantor would be required to waive any right otherwise available to it under U.S. law that is consistent with this provision.

The term “liabilities” would mean 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 would be as listed in the Model Regulation.

The Model Regulation would address 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 restriction on allowed trust investments. Requirements for a mortgage-related security would be specified. The terms “mortgage-related security” and “promissory note” would be defined.

**Equity interests.** The Model Regulation would address permissible equity interests involving the following: investments in common shares or partnership interests of a solvent U.S. institution, if certain requirements were 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 were 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 would provide that securities of an investment company registered pursuant to the Investment Company Act of 1940 would be permissible investments if the investment company met certain investment requirements. The bill would prohibit investments made by a trust in investment companies from exceeding certain limitations.

**Letters of credit.** A letter of credit would qualify 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 would be required would be deemed to be negligence or willful misconduct.

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

Pursuant to the Kansas credit for reinsurance statute, the Commissioner would be 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 would be 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 would require 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 would have to correspond with the requirements outlined.

**Certification procedure.** The process for certification would require 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 for 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 would be required to publish a list of all certified reinsurers and their ratings. To be eligible for certification, the assuming insurer would be required to meet certain requirements, as outlined. Each certified reinsurer would be 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 would

be 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 would be permitted to make appropriate adjustments to the security the certified reinsurer would be required to post to protect its liabilities to U.S. ceding insurers. If certain conditions exist, the Commissioner would be required, at a minimum, to increase the security the certified insurer is required to post by one rating level.

The assuming insurer would be 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 would be 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 would be 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 would be exempted from disclosure under the Kansas Open Records Act and would be withheld from public disclosure. The provisions providing for the confidentiality of public records would 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 would be required to publish notice and evidence of such recognition. The Commissioner would be permitted to establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

The Commissioner would be 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 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 would be 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 would be allowed to approve as eligible for certification. A qualified jurisdiction would be 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 would be 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 would be 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 would be recognized as qualified jurisdictions.

**Recognition of certification issued by a NAIC accredited jurisdiction.** The Commissioner would have the discretion to defer to the certification of an applicant who has been certified as a reinsurer in a 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 such additional information required by the Commissioner. The assuming insurer would be considered to be a certified insurer in Kansas. A change in the certified insurer's status or rating in the other jurisdiction would apply 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 would require 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 would be 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 would be 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" would be defined as a jurisdiction designated by the Commissioner that meets one of three requirements outlined in the bill.

The bill would require 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, or have its head office or be 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; and
  - Consents in writing to the jurisdiction of the courts of Kansas and to the appointment of the Commissioner as agent for the service of process.
  - Consents 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;
  - Provides 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;
- Confirms 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
  - Agrees 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 would be 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 would be required to timely create and publish a list of reciprocal jurisdictions. A list of reciprocal

jurisdictions would be published through the NAIC's committee process. The Commissioner's list would be required to include any reciprocal jurisdiction and consider any other reciprocal jurisdiction included in the NAIC list. The Commissioner would be 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 would be allowed to remove a jurisdiction from the list of reciprocal jurisdictions upon determination that 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 would be 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 would be allowed.

The Commissioner would be 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 a NAIC-accredited jurisdiction determines the conditions for a qualified jurisdiction have been met, the Commissioner would have the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions would be granted credit. The Commissioner would be 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 would be 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 would be 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 would be 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 would qualify for credit, except to the extent the assuming insurer's obligations under the contract are secured. If eligibility is revoked, credit would not 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 would be 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 would be 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 would be 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 would be 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" would be 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 would be 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 would be as outlined in the Model Regulation.

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

#### *Required Conditions of Trust Agreements*

This section would define “beneficiary,” “grantor,” and “obligations” and outline the required conditions for the trust agreements. The trust agreement would be entered into between the beneficiary, the grantor, and a trustee that shall be a qualified U.S. financial institution. The trust agreement would create a trust account into which assets would be deposited. All assets in the trust account would be held by the trustee at the trustee’s office in the United States. The bill would specify required provisions of the trust agreement, including the responsibilities of the trustee, the laws to which the agreement would be 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 would be allowed to provide that the ceding insurer would 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



would be allowed to provide that the ceding insurer would 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 would require the reinsurance agreement or the trust agreement to stipulate how the assets deposited in the trust would be valued and what it would consist of, and limitations on the types of investments. The trust agreement would be allowed to further specify the types of investments to be deposited.

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

The Model Regulation would outline 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 would authorize certain specified provisions in a reinsurance agreement. One such provision would allow 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, would be able whenever necessary to negotiate these assets without consent or signature from the assuming insurer or any other entity.

### *Final Reporting*

A trust agreement would be 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 would be allowed up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time. However, such reduction would not be 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 would not be construed to affect any actions or rights the Commissioner would be allowed to take or possess pursuant to provisions of state law.

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

The Model Regulation would outline 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 would be allowed in a reinsurance agreement with which the letter of credit is obtained would 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 would be used by the ceding insurer for its successors in interest only for certain enumerated reasons. However, the enumerated reasons would not preclude the ceding insurer and assuming insurer from providing for an interest payment, at a rate not in excess of 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 would allow 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 would not 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.

#### ***Credit for Reinsurance Statute (Section 2)***

The bill would add 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 would allow 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 would be 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 would be 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 would be 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 would be 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 would be 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 would 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 would be 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 would be 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 would be 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 would be required to be in a form consistent with the provisions allowing for credit when reinsurance is ceded to 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;
- 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; and
- The assuming insurer is not precluded from voluntarily providing information to the Commissioner.

*List of Reciprocal Jurisdictions*

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

- A list of reciprocal jurisdictions would be published through the NAIC committee process. The Commissioner's list would be required to include any reciprocal jurisdiction, as defined in the bill,

and the Commissioner would be required to consider any other reciprocal jurisdiction included in the NAIC list. The Commissioner would be permitted to approve a jurisdiction that does not appear on the NAIC reciprocal jurisdictions list in accordance with criteria developed by the Commissioner.

- The Commissioner would be 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 would be prohibited from removing the following from the list a 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 would be permitted, if otherwise permitted in the credit for reinsurance statute.

#### *List of Assuming Insurers*

The Commissioner would be 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 would be



permitted to add an assuming insurer to such list if a 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 would be permitted to impose that do not conflict with an applicable covered agreement.

*Revocation or Suspension of Eligibility of Assuming Insurer*

The Commissioner would be 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 would qualify 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 would 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 would be 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 would not be 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 would be 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 would be 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 would not be 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 Assuming Insurer*

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

### ***Insurance Holding Company Act (Sections 3, 4, and 5)***

#### *Definitions*

The following definitions would be added to the Insurance Holding Company Act:

- “Group-wide supervisor” would mean 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” would mean 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 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 billion or the total gross written

premiums of the insurance company system are at least \$10 billion.

*Notice of Divestiture of Controlling Interest*

With regard to transactions affecting control of domestic insurers, the bill would require 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 would be required to determine those instances in which each party seeking to divest or to acquire a controlling interest in an insurer would be required to file for and obtain approval of the transaction. The bill would require 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 would 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 would also be 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 would be 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.

## **Background**

The bill was introduced by the Senate Committee on Insurance at the request of the Department. [Note: A companion bill, HB 2134, has been introduced in the House.]

### ***Senate Committee on Insurance***

In the Senate Committee meeting, a representative of the Department provided **proponent** testimony stating the two provisions included in the bill are required for accreditation with NAIC, which is to take place this year. The Department representative stated one provision would update the credit for reinsurance statutes, including the incorporation of the newest version of the NAIC Model Regulation. The update is in response to an agreement between the European Union and the United States, which specifies that states have five years to adopt these standards to avoid federal preemption. A separate covered agreement was signed between the United States and the United Kingdom, which mirrors the language from the agreement with the European Union and has the same timing requirements for implementation. The representative stated the second part of the bill is an update to the model Holding Company Act to add an omitted definition and provide clarification on procedures for certain company filings. The representative noted the importance of the legislation in light of the NAIC accreditation process later this year and stated the bill ensures the Department maintains Kansas authority over Kansas companies. Written-only **proponent** testimony was provided by a representative of the American Council of Life Insurers.

No neutral or **opponent** testimony was provided.

The Senate Committee made a technical amendment to the sunset date pertaining to the confidentiality of records submitted by certified reinsurers that are not public information subject to disclosure.

## **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Department indicated enactment of the bill would have no fiscal effect.

Insurance; reinsurance; NAIC Reinsurance Model Regulation; Insurance Holding Company Act