

As Amended by House Committee

Session of 2017

SENATE BILL No. 19

By Committee on Financial Institutions and Insurance

1-12

1 AN ACT concerning insurance; relating to reinsurance; amending K.S.A.
2 2016 Supp. 40-221a and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2016 Supp. 40-221a is hereby amended to read as
6 follows: 40-221a. (a) ~~Any insurance company organized under the laws of~~
7 ~~this state may (1) with the consent of the commissioner of insurance, cede~~
8 ~~all of its risks to any other solvent insurance company authorized to~~
9 ~~transact business in this state or accept all of the risks of any other~~
10 ~~company, (2) accept all or any part of an individual risk or all or any part~~
11 ~~of a particular class of risks which it is authorized to insure, and (3) cede~~
12 ~~all or any part of an individual risk or all or any part of a particular class of~~
13 ~~risks to another solvent insurer or insurers having the power to accept such~~
14 ~~reinsurance.~~

15 ~~(b) Any insurance company organized under the laws of this state~~
16 ~~may take credit as an asset or as a deduction from loss and unearned~~
17 ~~premium reserves on such ceded risks to the extent reinsured by an insurer~~
18 ~~or insurers authorized to transact business in this state, but such credit on~~
19 ~~ceded risks reinsured by any insurer which is not authorized to transact~~
20 ~~business in this state may be taken in an amount not exceeding:~~

21 ~~(1) The amount of deposits by, and funds withheld from, the~~
22 ~~assuming insurer pursuant to express provision therefor in the reinsurance~~
23 ~~contract, as security for the payment of the obligations thereunder, if such~~
24 ~~deposits or funds are held subject to withdrawal by, and under the control~~
25 ~~of, the ceding insurer or are placed in trust for such purposes in a qualified~~
26 ~~United States financial institution, if withdrawals from such trust cannot be~~
27 ~~made without the consent of the ceding company;~~

28 ~~(2) the amount of a clean and irrevocable letter of credit issued by a~~
29 ~~qualified United States financial institution if such letter of credit is~~
30 ~~initially issued for a term of at least one year and by its terms is~~
31 ~~automatically renewed at each expiration date for at least an additional~~
32 ~~one-year term unless at least 30 days prior written notice of intention not~~
33 ~~to renew is given to the ceding company by the issuing qualified United~~
34 ~~States financial institution or the assuming company and provided that~~
35 ~~such letter of credit is issued under arrangements satisfactory to the~~
36 ~~commissioner of insurance as constituting security to the ceding insurer~~

1 substantially equal to that of a deposit under paragraph (1) of this
2 subsection; or

3 (3) ~~the amount of loss and unearned premium reserves on such ceded~~
4 ~~risks to an assuming insurer which maintains a trust fund in a qualified~~
5 ~~United States financial institution, as defined in (b)(3)(D), for the payment~~
6 ~~of the valid claims of its United States ceding insurers, their assigns and~~
7 ~~successors in interest. The assuming insurer shall report annually to the~~
8 ~~commissioner information substantially the same as that required to be~~
9 ~~reported on the national association of insurance commissioners annual~~
10 ~~statement form by licensed insurers to enable the commissioner to~~
11 ~~determine the sufficiency of the trust fund. In the case of a single assuming~~
12 ~~insurer, the trust shall consist of a trustee account representing the~~
13 ~~assuming insurer's liability attributable to business written in the United~~
14 ~~States and, in addition, the assuming insurer shall maintain a trustee~~
15 ~~surplus of not less than \$20,000,000. In the case of a group including~~
16 ~~incorporated and individual unincorporated underwriters, the trust shall~~
17 ~~consist of a trustee account representing the group's liabilities attributable~~
18 ~~to business written in the United States and, in addition, the group shall~~
19 ~~maintain a trustee surplus of which \$100,000,000 shall be held jointly for~~
20 ~~the benefit of United States ceding insurers of any member of the group;~~
21 ~~the incorporated members of the group shall not be engaged in any~~
22 ~~business other than underwriting as a member of the group and shall be~~
23 ~~subject to the same level of solvency regulation and control by the group's~~
24 ~~domiciliary regulator as are the unincorporated members; and the group~~
25 ~~shall make available to the commissioner an annual certification of the~~
26 ~~solvency of each underwriter by the group's domiciliary regulator and its~~
27 ~~independent public accountants.~~

28 (A) ~~Such trust must be in a form approved by the commissioner of~~
29 ~~insurance. The trust instrument shall provide that contested claims shall be~~
30 ~~valid and enforceable upon the final order of any court of competent~~
31 ~~jurisdiction in the United States. The trust shall vest legal title to its assets~~
32 ~~in the trustees of the trust for its United States ceding insurers, their~~
33 ~~assigns and successors in interest. The trust and the assuming group or~~
34 ~~insurer shall be subject to examination as determined by the commissioner.~~
35 ~~The trust, described herein, must remain in effect for as long as the~~
36 ~~assuming group or insurer shall have outstanding obligations due under the~~
37 ~~reinsurance agreements subject to the trust.~~

38 (B) ~~No later than February 28 of each year the trustees of the trust~~
39 ~~shall report to the commissioner in writing setting forth the balance of the~~
40 ~~trust and listing the trust's investments at the preceding year end and shall~~
41 ~~certify the date of termination of the trust, if so planned, or certify that the~~
42 ~~trust shall not expire prior to the next following December 31.~~

43 (C) ~~The credit authorized under subsection (b)(3) shall not be allowed~~

1 unless the assuming group or insurer agrees in the reinsurance agreements:

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

9 (ii) ~~to designate the commissioner or a designated attorney as its true~~
10 ~~and lawful attorney upon whom may be served any lawful process in any~~
11 ~~action, suit or proceeding instituted by or on behalf of the ceding company.~~

12 (iii) ~~This provision is not intended to conflict with or override the~~
13 ~~obligation of the parties to a reinsurance agreement to arbitrate their~~
14 ~~disputes, if such an obligation to do so is created in the agreement.~~

15 (D) (i) ~~For the purposes of paragraphs (1) and (3) of subsection (b), a~~
16 ~~"qualified United States financial institution" means, for purposes of those~~
17 ~~provisions of this law specifying those institutions that are eligible to act~~
18 ~~as a fiduciary of a trust, an institution that:~~

19 (aa) ~~Is organized, or (in the case of a U.S. branch or agency office of~~
20 ~~a foreign banking organization) licensed, under the laws of the United~~
21 ~~States or any state thereof and has been granted authority to operate with~~
22 ~~fiduciary powers; and~~

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

25 (ii) ~~For the purposes of paragraph (2) of subsection (b), "qualified~~
26 ~~United States financial institution" means, for the purpose of those~~
27 ~~provisions of this law specifying those institutions that are eligible to issue~~
28 ~~a letter of credit, an institution that:~~

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

32 (bb) ~~is regulated, supervised and examined by United States federal~~
33 ~~or state authorities having regulatory authority over banks and trust~~
34 ~~companies; and~~

35 (cc) ~~has been determined by the insurance commissioner to meet such~~
36 ~~standards of financial condition and standing as are considered necessary~~
37 ~~and appropriate to regulate the quality of financial institutions whose~~
38 ~~letters of credit will be acceptable to the commissioner.~~

39 ~~In making determinations under this clause, the commissioner may~~
40 ~~consult with the securities valuation office of the national association of~~
41 ~~reinsurance commissioners.~~

42 (e) ~~No credit shall be allowed, as an admitted asset or deduction from~~
43 ~~liability, to any ceding insurer organized under the laws of this state for~~

1 reinsurance, unless the reinsurance contract provides, in substance, that in
2 the event of the insolvency of the ceding insurer, the reinsurance shall be
3 payable under a contract reinsured by the assuming insurer on the basis of
4 the liability of the ceding company under the contract or contracts
5 reinsured, as approved by the liquidation court, without diminution
6 because of the insolvency of the ceding company. Any reinsurance
7 agreement entered into with a domestic insurer which may be canceled on
8 less than 90 days' notice, and which cancellation would constitute a
9 material cancellation as defined by K.S.A. 40-2,156a, and amendments
10 thereto, must provide in the reinsurance agreement, in substance, for a run-
11 off of the reinsurance in force at the date of cancellation, unless the
12 agreement is canceled for nonpayment of premium or fraud in the
13 inducement. Reinsurance payments shall be made directly to the ceding
14 insurer or to its domiciliary liquidator except: (1) Where the reinsurance
15 contract or policy reinsured specifically provides another payee of such
16 reinsurance in the event of the insolvency of the ceding insurer; or (2)
17 where the assuming insurer, with the consent of the direct insured, has
18 assumed such policy obligations of the ceding insurer as direct obligations
19 of the assuming insurer to the payees under such policies and in
20 substitution for the obligations of the ceding insurer to such payees.

21 (d) The reinsurance agreement may provide that the domiciliary
22 liquidator of an insolvent ceding insurer shall give written notice to the
23 assuming insurer of the pendency of a claim against such ceding insurer on
24 the contract reinsured within a reasonable time after such claim is filed in
25 the liquidation proceeding. During the pendency of such claim, any
26 assuming insurer may investigate such claim and interpose, at its own
27 expense, in the proceeding where such claim is to be adjudicated any
28 defenses which it deems available to the ceding insurer, or its liquidator.
29 Such expense may be filed as a claim against the insolvent ceding insurer
30 to the extent of a proportionate share of the benefit which may accrue to
31 the ceding insurer solely as a result of the defense undertaken by the
32 assuming insurer. Where two or more assuming insurers are involved in
33 the same claim and a majority in interest elect to interpose a defense to
34 such claim, the expense shall be apportioned in accordance with the terms
35 of the reinsurance agreement as though such expense had been incurred by
36 the ceding insurer. *Credit for reinsurance shall be allowed a domestic*
37 *ceding insurer as either an asset or a reduction from liability on account*
38 *of reinsurance ceded only when the reinsurer meets the requirements of*
39 *paragraphs (1), (2), (3), (4), (5) or (6). Credit shall be allowed under*
40 *paragraphs (1), (2) or (3) of this subsection only as respects cessions of*
41 *those kinds or classes of business that the assuming insurer is licensed or*
42 *otherwise permitted to write or assume in its state of domicile or, in the*
43 *case of a United States branch of an alien assuming insurer, in the state*

1 through which it is entered and licensed to transact insurance or
2 reinsurance. Credit shall be allowed only under paragraphs (3) or (4) of
3 this subsection if the applicable requirements of paragraph (7) have been
4 satisfied.

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

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

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

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

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

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

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

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

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

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

42 (B) The requirement of subsection (a)(3)(A)(i) does not apply to
43 reinsurance ceded and assumed pursuant to pooling arrangements among

1 *insurers in the same holding company system.*

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

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

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

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

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

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

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

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

43 *(ii) At any time after the assuming insurer has permanently*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *and promptly enforce final United States judgments and arbitration*
2 *awards. Additional factors may be considered in the discretion of the*
3 *commissioner.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 ~~(10)~~(11) (A) *A domestic ceding insurer shall take steps to manage its*
34 *reinsurance recoverables proportionate to its own book of business. A*
35 *domestic ceding insurer shall notify the commissioner within 30 days after*
36 *reinsurance recoverables from any single assuming insurer, or group of*
37 *affiliated assuming insurers, exceeds 50% of the domestic ceding insurer's*
38 *last reported surplus to policyholders, or after it is determined that*
39 *reinsurance recoverables from any single assuming insurer, or group of*
40 *affiliated assuming insurers, is likely to exceed this limit. The notification*
41 *shall demonstrate that the exposure is safely managed by the domestic*
42 *ceding insurer.*

43 (B) *A domestic ceding insurer shall take steps to diversify its*

1 reinsurance program. A domestic ceding insurer shall notify the
2 commissioner within 30 days after ceding to any single assuming insurer,
3 or group of affiliated assuming insurers, more than 20% of the ceding
4 insurer's gross written premium in the prior calendar year; or after the
5 domestic ceding insurer has determined that the reinsurance ceded to any
6 single assuming insurer; or group of affiliated assuming insurers, is likely
7 to exceed this limit. The notification shall demonstrate that the exposure is
8 safely managed by the domestic ceding insurer.

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

21 (1) Cash;

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

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

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

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

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

43 (A) Is organized or, in the case of a United States office of a foreign

1 *banking organization, licensed under the laws of the United States or any*
2 *state thereof;*

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

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

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

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

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

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

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

26 Sec. 2. K.S.A. 2016 Supp. 40-221a is hereby repealed.

27 Sec. 3. This act shall take effect and be in force from and after
28 January 1, 2018, and its publication in the statute book.