CHAPTER 133

(HB 350)

AN ACT relating to insurance regulatory requirements.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 304.2-205 is amended to read as follows:

(1) The provisions of this section apply to all domestic, foreign, and alien insurers***,*** fraternal benefit societies, health maintenance organizations, and nonprofit hospital, medical-surgical, dental, and health service corporations authorized to transact business pursuant to this chapter.

(2) (a) ***1.*** Each domestic, foreign, and alien insurer***,***~~[and]~~ fraternal benefit society, health maintenance organization, and nonprofit hospital, medical-surgical, dental, and health service corporation authorized to transact business pursuant to this chapter shall annually on or before March 1 of each year file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with additional filings as prescribed by the commissioner, for the preceding year.

2. The information filed with the National Association of Insurance Commissioners shall***:***

a. Be ***submitted electronically;***

b. ***Be*** in the same format and scope as that required by the commissioner***;*** and~~[shall]~~

c. Include the***:***

i. Signed jurat page***;*** and~~[the]~~

ii. Life and health actuarial certification.

3. Any amendments or additions to the annual statement filing subsequently filed with the commissioner shall also be filed ***electronically*** with the National Association of Insurance Commissioners.

(b) Foreign insurers, health maintenance organizations, and fraternal benefit societies that are domiciled in states which have laws substantially similar to paragraph (a) of this subsection shall be deemed in compliance with this section.

(c) Nothing contained in this section shall be deemed to require anyone filing documents with the National Association of Insurance Commissioners to pay any filing fee for a filing.

(3) Members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, National Association of Insurance Commissioners employees, and all others charged with the responsibility of collecting, reviewing, analyzing, or disseminating the information developed from the filing of the annual statement convention blanks shall not be subject to civil liability for defamation or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected from the filings required by this section while acting in good faith.

➔Section 2. KRS 304.2-230 is amended to read as follows:

(1) Whenever the commissioner determines to examine the affairs of any person, he ***or she*** shall designate one ***(1)*** or more examiners***, which may include analysts,*** and instruct them as to the scope of the examination. The examiner ***or analyst*** shall, upon demand, exhibit his ***or her*** official credentials to the person under examination. In conducting the examination, the examiner ***or analyst*** shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ other guidelines or procedures as the commissioner deems appropriate.

(2) (a) ***1.*** An examiner ***or analyst*** may not be appointed by the commissioner if the examiner ***or analyst***, either directly or indirectly, has a conflict of interest or is affiliated with the management of***,*** or owns a pecuniary interest in***,*** any person subject to examination.

2. This subsection shall not be construed to automatically preclude an examiner ***or analyst*** from being:

a.~~[1.]~~ A policyholder or claimant under an insurance policy;

b.~~[2.]~~ A grantor of a mortgage or similar instrument on the examiner's ***or analyst's*** residence to a regulated entity if done under customary terms and in the ordinary course of business;

c.~~[3.]~~ An investment owner in shares of regulated diversified investment companies; or

d.~~[4.]~~ A settler or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

(b) Notwithstanding the requirements of paragraph (a) of this subsection, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions even though these persons may from time to time be similarly employed or retained by persons subject to examination.

(3) ***(a)*** ***Except as provided in paragraph (b) of this subsection,*** any ***examiner or analyst***~~[person]~~ performing an examination of an insurer on behalf of, and as called by, the commissioner***, including any analyst engaged in review, verification, and analysis of an insurer,*** shall have official immunity and shall be immune from suit and liability, both personally and in their official capacities, for any claim for damage to, or loss of property, or personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the examiner ***or analyst,*** or any assistant or contractor***,*** arising out of, or by reason of, their duties or employment.

(b) Nothing in this subsection shall be construed to hold the examiner ***or analyst,*** or any assistant or contractor***,*** immune from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the examiner ***or analyst***~~[,]~~ ***or*** any assistant~~[,]~~ or contractor.

(4) The commissioner shall conduct ***the***~~[such]~~ examination in an expeditious, fair***,*** and impartial manner.

(5) Upon~~[any such]~~ examination***,*** the commissioner, or the examiner ***or analyst*** if specifically so authorized in writing by the commissioner, shall have power to issue subpoenas, administer oaths, and to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.

(6) Every person being examined, ***and*** its officers, attorneys, employees, agents***,*** and representatives***,*** shall***:***

(a) Make freely available to the commissioner***,*** or his ***or her*** examiners ***or analysts,*** the accounts, records, documents, files, information, assets***,*** and matters of ***the***~~[such]~~ person in ***its***~~[his]~~ possession or control relating to the subject of the examination***;*** and~~[shall]~~

(b) Facilitate the examination.

(7) ***(a)*** Neither the commissioner nor any examiner ***or analyst*** shall remove any record, account, document, file***,*** or other property of the person being examined from the offices or place of ***that***~~[such]~~ person except with the ***person's*** written consent~~[of such person]~~ in advance of ***the***~~[such]~~ removal or pursuant to an order of court duly obtained.

(b) This ***subsection***~~[provision]~~ shall not be deemed to affect the making and removal of copies or abstracts of any~~[such]~~ record, account, document***,*** or file.

(8) Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners ***or analysts*** in the exercise of their authority pursuant to this section is guilty of a violation of this code.

(9) ***(a)*** The commissioner may terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state.

(b) Findings of fact and conclusions made pursuant to an examination shall be prima facie evidence in any legal or regulatory action.

(c) The commissioner may use***,*** and~~[,]~~ if appropriate, may make public***,*** any final or preliminary examination report, any examiner's ***or analyst's*** workpapers or other documents, or any other information discovered or developed during the course of the examination in the furtherance of any legal or regulatory action that the commissioner may, in his ***or her*** sole discretion, deem appropriate.

(d) Nothing in this subsection shall be binding upon the court in making determinations about relevancy and admissibility in any civil action pertaining to any ***examination*** ~~[such]~~ documents.

➔Section 3. KRS 304.3-240 is amended to read as follows:

(1) ***(a)*** Each authorized insurer shall annually file with the commissioner a true statement of its financial condition, transactions, and affairs as of December 31 preceding.

(b) The statement shall be***:***

1. ***Filed electronically*** on forms prescribed by the National Association of Insurance Commissioners***;*** ~~[and shall be]~~

2. Completed according to the instructions of the National Association of Insurance Commissioners***;*** ~~[,]~~ and ~~[shall be]~~

3. Verified by the oaths of at least two (2) of the insurer's principal officers. The annual statement of a reciprocal insurer shall be made and verified by its attorney-in-fact.

(c) The annual statement shall be filed by March 1 of each year ~~[, or, if filed by mail, postmarked no later than March 1]~~.

(d) The annual statement of a foreign or alien insurer may be executed or verified by facsimile or reproduced signature; however, the annual statement of a domestic insurer shall contain original signatures.

(2) The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner.

(3) The annual statement of an alien insurer shall***:***

(a) Relate only to its assets, transactions, and affairs in the United States unless the commissioner requires otherwise***; and*** ~~[. The statement shall]~~

(b) Be verified by the insurer's United States manager or by its officers duly authorized.

(4) The commissioner may suspend or revoke the authority of any insurer failing to file its annual and quarterly statement when due or failing so to file during any extension of time therefor**,** which the commissioner, for good cause, may grant.

(5) Notwithstanding the provisions of this section or any other law of this Commonwealth***:*** ~~[,]~~

(a) An authorized insurer may, subject to the requirements of ***administrative*** regulations adopted by the commissioner, publish financial statements or information based on financial statements prepared on a basis which***:***

1. Is in accordance with requirements of a competent authority***;*** and ~~[which]~~

2. Differs from the basis of the statements which have been filed with the commissioner in compliance with this section***; and*** ~~[.]~~

(b) ***The*** ~~[Such]~~ differing financial statements**,** or information based on the financial statements**,** shall not be made the basis for the application of any provision of this chapter not relating solely to the publication of financial information unless the provision specifically so requires.

➔Section 4. KRS 304.5-140 is amended to read as follows:

(1) (a) For the purposes of subsection (4)(c) of this section, a "qualified United States financial institution" means an institution that:

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

2. Is regulated, supervised, and examined by the United States federal or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by the commissioner, or the Securities Valuation Office of the NAIC, to meet the standards of financial condition and standing considered necessary and appropriate to

regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) A "qualified United States financial institution" means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

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

2. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(c) For purposes of subsection (3)(f)1. of this section, "reciprocal jurisdiction" means a jurisdiction that meets one (1) of the following:

1. A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union;

2. A United States jurisdiction that meets the requirements for accreditation under the NAIC's financial standards and accreditation program;

3. A qualified jurisdiction, as determined by the commissioner pursuant to subsection (3)(e)4. of this section, which is not otherwise described in this paragraph, and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner in administrative regulation; or

4. Any other jurisdiction contained on the list of reciprocal jurisdictions published by the commissioner in accordance with subsection (3)(g) of this section.

(d) As used in this section:

1. "Covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. secs. 313 and 314, and that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with the ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance; and

2. "NAIC" means National Association of Insurance Commissioners.

(2) (a) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of:

1. Subsection (3)(a), (b), (c), (d), (e), (f), or (h) of this section; and

2. Paragraphs (b), (c), (d), and (e) of this subsection.

(b) The commissioner may promulgate administrative regulations pursuant to subsection (8)(a)2. of this section that establish specific additional requirements relating to or setting forth:

1. The valuation of assets or reserve credits;

2. The amount and forms of security supporting reinsurance arrangements described in that subsection; and

3. The circumstances pursuant to which credit will be reduced or eliminated.

(c) For reinsurers meeting the requirements of subsection (3)(c) of this section, the requirements of paragraph (i) of that subsection shall also be met.

(d) For reinsurers meeting the requirements of subsection (3)(d) of this section, the requirements of paragraphs (i) and (j) of that subsection shall also be met.

(e) For reinsurers meeting the requirements of subsection (3)(e) of this section, the requirements of paragraph (j) of that subsection shall also be met.

(3) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is authorized to transact insurance or reinsurance in Kentucky.

(b) 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in Kentucky. An accredited reinsurer is one which:

a. Files with the commissioner evidence of its submission to Kentucky's jurisdiction;

b. Submits to Kentucky's authority to examine its books and records;

c. Is licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;

d. Files annually with the commissioner a copy of its annual statement filed with the insurance regulatory official of its state of domicile and a copy of its most recent audited financial statement; and

e. Demonstrates to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer meets the requirements of this subdivision at the time of its application if:

i. It maintains a surplus as regards policyholders in an amount that is not less than twenty million dollars ($20,000,000); and

ii. Its accreditation has not been denied by the commissioner within ninety (90) days after submission of its accreditation application.

2. Credit shall not be allowed a ceding insurer under this paragraph if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

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

1. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and

2. Submits to the authority of the commissioner to examine its books and records.

However, subparagraph 1. of this paragraph shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(d) 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust in a qualified United States financial institution for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by authorized insurers to enable the commissioner to determine the sufficiency of the trust.

2. a. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, except as provided in subdivision b. of this subparagraph, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000).

b. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) years, the commissioner may authorize a reduction in the trusteed surplus required by subdivision a. of this subparagraph, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of a reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required

trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

3. In the case of a group including incorporated and individual unincorporated underwriters:

a. The trust shall consist of a trusteed account representing the respective underwriter's liabilities attributable to business written in the United States;

b. The group shall maintain a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group;

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

d. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary insurance regulatory official and its independent public accountants.

4. In the case of a group of incorporated underwriters under common administration, the group shall:

a. Comply with the reporting requirements contained in subparagraph 1. of this paragraph;

b. Have continuously transacted insurance business outside the United States for at least three (3) years immediately prior to making an application for accreditation;

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

d. Maintain an aggregate policyholders' surplus of at least ten billion dollars ($10,000,000,000);

e. Maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group; and

f. Each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary insurance regulatory official and its independent public accountant.

5. The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust shall remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

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

(e) 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that:

a. Has been certified by the commissioner as a reinsurer in this state; and

b. Secures its obligations in accordance with the requirements of this paragraph.

2. In order to be eligible for certification, the assuming insurer shall:

a. Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by subparagraph 4. of this paragraph;

b. Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner by administrative regulation;

c. Maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the commissioner by administrative regulation;

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

e. Agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and

f. Satisfy any other relevant requirements for certification as determined by the commissioner.

3. An association, including incorporated and individual unincorporated underwriters, may be certified as a reinsurer in this state if the association satisfies the requirements of subparagraph 2. of this paragraph and:

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

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

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

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

b. In order to determine whether the domiciliary jurisdiction of an assuming insurer from a jurisdiction outside of the United States is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction outside of the United States, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the jurisdiction outside of the United States to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

c. The commissioner shall consider the list of qualified jurisdictions published through the NAIC's committee process when determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list, the commissioner shall

provide justification in accordance with criteria to be developed by the commissioner by administrative regulation.

d. Jurisdictions within the United States that meet the requirements for accreditation under the NAIC's financial standards and accreditation program shall be recognized as qualified.

e. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may revoke or suspend the reinsurer's certification indefinitely, in lieu of revocation.

5. The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner by administrative regulation. The commissioner shall publish a list of all certified reinsurers and their ratings.

6. a. A certified reinsurer shall secure obligations assumed from United States ceding insurers pursuant to this paragraph at a level consistent with its rating as specified by administrative regulation promulgated by the commissioner.

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

c. If a certified reinsurer maintains a trust to fully secure its obligations subject to paragraph (d) of this subsection, and chooses to secure its obligations incurred as a certified reinsurer in the form of a ***multi-beneficiary*** ~~[multibeneficiary]~~ trust, the certified reinsurer shall maintain separate trust accounts for:

i. Its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions; and

ii. Its obligation subject to paragraph (d) of this subsection.

d. The commissioner shall not grant a certification pursuant to this paragraph unless the certified reinsurer agrees to bind itself, by language of the trust and agreement with the commissioner with principal regulatory oversight of each trust account, to fund, upon termination of any applicable trust account, out of the remaining surplus of the trust any deficiency of any other trust account.

e. The minimum trusteed surplus requirements provided in paragraph (d) of this subsection are not applicable to a ***multi-beneficiary*** ~~[multibeneficiary]~~ trust maintained by a certified reinsurer for the purpose of securing obligations incurred pursuant to this paragraph, except that the ***multi-beneficiary*** ~~[multibeneficiary]~~ trust shall maintain a minimum trusteed surplus of ten million dollars ($10,000,000).

f. With respect to obligations incurred by a certified reinsurer pursuant to this paragraph, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and the commissioner may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

g. i. For purposes of this paragraph, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations.

ii. As used in this subdivision, "terminated" includes revocation, suspension, voluntary surrender, and inactive status, except if the commissioner continues to assign a higher rating as permitted by this subsection, a certified reinsurer in inactive status or reinsurer whose certification has been suspended shall not be considered "terminated."

7. If an applicant for certification has been certified as a reinsurer in an NAIC-accredited jurisdiction, the commissioner may defer to that jurisdiction's certification and the rating

assigned by that jurisdiction, and the reinsurer shall be considered a certified reinsurer in this state.

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

(f) Credit shall be allowed when the reinsurance is ceded to an assuming insurer if:

1. The assuming insurer has its head office in, or is domiciled in, as applicable, and is licensed in, a reciprocal jurisdiction;

2. The assuming insurer has and maintains, on an ongoing basis:

a. For assuming insurers that are not associations:

i. Minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in administrative regulation; and

ii. A minimum solvency or capital ratio, as applicable, as set forth in administrative regulation; or

b. For assuming insurers that are associations, including incorporated and individual unincorporated underwriters:

i. Minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth by the commissioner in administrative regulation; and

ii. 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;

3. The assuming insurer agrees, and provides adequate assurance, in a form prescribed by the commissioner, to the following:

a. To provide prompt written notice and explanation to the commissioner if the assuming insurer falls below the minimum requirements set forth in subparagraph 2. of this paragraph, or if any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law;

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

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

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

e. i. To confirm that the assuming insurer is not presently participating in any solvent

scheme of arrangement which involves this state's ceding insurers; and

ii. To notify the ceding insurer and the commissioner, and to provide security in the amount of one hundred percent (100%) of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into a solvent scheme of arrangement referenced in subpart i. of this subdivision. The security required under this subdivision shall be in a form consistent with the provisions of paragraph (e) of this subsection and subsection (4) of this section, as specified by the commissioner in administrative regulation;

4. The assuming insurer or its legal successor provides, upon request of the commissioner, on behalf of itself and any legal predecessors, any documentation prescribed by the commissioner in administrative regulation;

5. The assuming insurer maintains a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth by the commissioner in administrative regulation; and

6. The assuming insurer's supervisory authority confirms to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements of subparagraph 2. of this paragraph.

Nothing in this paragraph precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(g) For purposes of paragraph (f) of this subsection:

1. a. The commissioner shall timely create and publish a list of reciprocal jurisdictions which shall include reciprocal jurisdictions as defined in subsection (1) of this section.

b. The commissioner shall consider, and may approve, any other reciprocal jurisdiction:

i. On the list of reciprocal jurisdictions published by the NAIC, through the NAIC committee process; and

ii. That meets the criteria established by the commissioner by administrative regulation.

c. The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process established by the commissioner by administrative regulation, except the commissioner shall not remove a reciprocal jurisdiction, as defined in subsection (1) of this section. Upon removal of a reciprocal jurisdiction from the commissioner's list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed if otherwise allowed under this section;

2. a. The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions ***set forth in paragraph (f) of this subsection***~~[,]~~ and to which cessions shall be granted ***credit in accordance with***~~[, as set forth in]~~ paragraph (f) of this subsection.

b. The commissioner may add an assuming insurer to the~~[commissioner's]~~ list ***described in subdivision a.*** of~~[assuming insurers under]~~ this subparagraph if an ***NAIC-accredited***~~[NAIC accredited]~~ jurisdiction has added ***the***~~[such]~~ assuming insurer to ***a***~~[its]~~ list of such assuming insurers, or if upon initial eligibility, the assuming insurer submits information to the commissioner as required under paragraph (f)4. of this subsection and complies with any additional requirements that the commissioner may impose by administrative regulation, except to the extent that ***they***~~[there is a]~~ conflict with an applicable covered agreement***.***

c. For purposes of carrying out the provisions of this subparagraph:

i. If an NAIC-accredited jurisdiction has determined that the conditions set forth in paragraph (f) of this subsection have been met, the commissioner may defer to that jurisdiction's determination;

ii The commissioner may accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC;

iii. If an assuming insurer requests the commissioner to defer to another NAIC-accredited jurisdiction's determination, the insurer shall submit the request on forms prescribed by the commissioner, and any additional information as the commissioner may require, by administrative regulation; and

iv. Upon receiving a request described in subpart iii. of this subdivision, the commissioner shall notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility;

3. a. If the commissioner determines that an assuming insurer no longer meets one (1) or more of the requirements of paragraph (f) of this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under paragraph (f) of this subsection, in accordance with procedures set forth in administrative regulation.

   b. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit, except to the extent that the assuming insurer's obligations under the contract are secured in accordance with subsection (4) of this section.

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

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

5. a. Credit may be taken under paragraph (f) of this subsection for reinsurance agreements entered into, amended, or renewed, on or after July 15, 2020, and only with respect to losses incurred and reserves reported after the later of:

      i. The date on which the assuming insurer has met all eligibility requirements pursuant to paragraph (f) of this subsection; or

      ii. The effective date of the new reinsurance agreement, amendment, or renewal.

   b. Nothing in this paragraph shall be construed to alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under paragraph (f) of this subsection, as long as the reinsurance qualifies for credit under any other provision of this section; and

6. Nothing in this paragraph or paragraph (f) of this subsection shall be construed to:

   a. Limit or in any way alter the capacity of the parties to a reinsurance agreement to:

      i. Agree on requirements for security or other terms in the reinsurance agreement, except as expressly prohibited by this section or other applicable law; or

      ii. Renegotiate the agreement; or

   b. Authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement.

(h) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), (b), (c), (d), (e), or (f) of this subsection, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction or reinsurance ceded to a residual market mechanism reinsurance association, or the members thereof, created pursuant to law or which has been voluntarily created as such by its members with the approval of the commissioner.

(i) If the assuming insurer is not authorized, certified, or accredited to transact insurance or reinsurance in Kentucky, the credit permitted by paragraphs (c) and (d) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court in the event of an appeal; and

2. To designate the Secretary of State or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

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

(j) If the assuming insurer does not satisfy the requirements of paragraph (a), (b), (c), or (f) of this subsection, the credit permitted by paragraph (d) or (e) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

1. Notwithstanding any other provisions in the trust instrument, if the trust is inadequate because it contains an amount less than the amount required by paragraph (d)2. of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust;

2. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

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

4. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this paragraph.

(k) 1. If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

2. The commissioner shall provide the reinsurer notice and an opportunity for hearing prior to the entry of a suspension or revocation order.

3. A suspension or revocation order shall not take effect until after a hearing is conducted, unless:

a. The reinsurer waives its right to hearing;

b. The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under paragraph (e)7. of this subsection; or

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

4. While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (4) of this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's

obligations under the contract are secured in accordance with paragraph (e)6. of this subsection or subsection (4) of this section.

(l) 1. A ceding insurer shall manage its reinsurance recoverables proportionate to its own book of business and diversify its reinsurance program.

2. a. A domestic ceding insurer shall notify the commissioner within thirty (30) days after:

i. Reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent (50%) of the domestic ceding insurer's last reported surplus to policyholders; or

ii. It is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed the limit set forth in subpart i. of this subdivision.

b. A domestic ceding insurer shall notify the commissioner within thirty (30) days after:

i. Ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent (20%) of the ceding insurer's gross written premium in the prior calendar year; or

ii. It has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed the limit set forth in subpart i. of this subdivision.

c. The notification required by this subparagraph shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(m) 1. In order to facilitate the prompt payment of claims, the commissioner may permit a certified reinsurer to defer posting the security for catastrophic recoverables for a period of up to one (1) year from the date of the first instance of a liability reserve entry by the ceding insurer as a result of a loss from a catastrophic occurrence.

2. Upon notice by the ceding insurer to the commissioner that the certified reinsurer has failed to pay claims owed under a reinsurance agreement in a timely manner, the commissioner shall notify the certified reinsurer that it is no longer permitted to defer the posting of security for catastrophic recoverables.

3. Reinsurance recoverables for only the following lines of business, as reported on the NAIC's annual financial statement related specifically to the catastrophic occurrence, shall be included in the deferral:

a. Fire;

b. Allied lines;

c. Farmowner's multiple peril;

d. Homeowner's multiple peril;

e. Commercial multiple peril;

f. Inland marine;

g. Earthquake; and

h. Auto physical damage.

4. The commissioner may promulgate administrative regulations to establish the process for a certified reinsurer to seek a deferral of posting of security for catastrophic recoverables.

(4) An asset or a reduction from liability for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsections (2) and (3) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held

in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets, including those deemed exempt from filing, as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

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

(d) Any other form of security acceptable to the commissioner.

(5) Cession of bulk reinsurance by a domestic insurer is subject to KRS 304.24-420.

(6) (a) Credit shall be allowed as an asset or as a deduction from liability, to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under subsection (2), (3), (4), or (5) of this section, except that no such credit shall be allowed unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:

1. Where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or

2. Where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(b) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defenses which it deems available to the ceding insurer or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two (2) or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

(7) Upon request of the commissioner an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(8) (a) The commissioner may promulgate administrative regulations to:

1. Implement the provisions of this section; and

2. Regulate any of the following reinsurance arrangements:

a. Life insurance policies with guaranteed nonlevel gross premium or guaranteed nonlevel benefits;

b. Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

c. Variable annuities with guaranteed death or living benefits;

d. Long-term care insurance policies; or

e. Such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

(b) An administrative regulation adopted pursuant to paragraph (a)2.a. or b. of this subsection may apply to any treaty containing policies issued:

1. On or after January 1, 2015; or

2. Prior to January 1, 2015, if risk pertaining to these policies is ceded in connection with the treaty in whole or in part, on or after January 1, 2015.

(c) An administrative regulation adopted pursuant to paragraph (a)2. of this subsection:

1. May require the ceding insurer, in calculating the amounts or forms of security required to be held by the insurer pursuant to this section, to use the Valuation Manual adopted by the NAIC under Section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable; and

2. Shall not apply to cessions to an assuming insurer that:

a. Meets the requirements set forth in subsection (3)(f) of this section;

b. Is certified in this state; or

c. Maintains at least two hundred fifty million dollars ($250,000,000) in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices, and is:

i. Licensed in at least twenty-six (26) states; or

ii. Licensed in at least ten (10) states, and licensed or accredited in a total of at least thirty-five (35) states.

(d) The authority to promulgate administrative regulations pursuant to paragraph (a)2. of this subsection shall not limit the commissioner's general authority to promulgate administrative regulations pursuant to paragraph (a)1. of this subsection.

(9) Subsections (1) to (4) of this section shall apply to all cessions after July 14, 1992, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after July 14, 1992.

➔Section 5. KRS 304.6-134 is amended to read as follows:

(1) The commissioner may exempt specific product forms or product lines of a domestic company, that is licensed and doing business only in Kentucky, from the requirements of KRS 304.6-143 if:

(a) The commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(b) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual and any requirements established by the commissioner and promulgated by administrative regulation.

(2) A domestic company that has less than three hundred million dollars ($300,000,000) of ordinary life premiums or a company that is a member of a group of life insurers that has combined ordinary life premiums of less than six hundred million dollars ($600,000,000) and that is licensed and doing business in Kentucky is exempt from the requirements of KRS 304.6-143 and 304.6-151 if:

(a) ~~[The company reported total adjusted capital of at least four hundred fifty percent (450%) of authorized control level risk-based capital in the risk-based capital report for the prior calendar year;~~

~~(b)]~~The appointed actuary has provided an unqualified opinion on the reserves in accordance with KRS 304.6-171 for the prior calendar year; and

(b)~~[(c)]~~ The company has provided a certification by a qualified actuary that any universal life policy with a secondary guarantee, issued or assumed by the company after the operative date of the valuation

manual, meets the definition of a nonmaterial secondary guarantee universal life product as defined in the valuation manual.

(3) For purposes of subsection (2) of this section, ordinary life premiums are measured as direct, plus reinsurance assumed from an unaffiliated company, from the prior calendar year annual statement.

(4) A domestic company that meets the requirements of subsection (2) of this section shall file a statement with the commissioner certifying that these requirements have been met for the current calendar year based on premiums and other values from the prior calendar year's financial statements prior to July 1 of the current calendar year.

(5) For a domestic company that files a statement under subsection (4) of this section, KRS 304.6-130, 304.6-132, 304.6-133, 304.6-140, 304.6-141, 304.6-145, 304.6-150, 304.6-155, 304.6-160, 304.6-170, 304.6-171, 304.6-180, and 304.15-410 shall be applicable; however**,** any references to KRS 304.6-143 and 304.6-151 shall not apply.

➔Section 6. KRS 304.17A-300 is amended to read as follows:

(1) ***(a)*** A provider-sponsored integrated health delivery network may be created ***before the effective date of this Act*** by health care providers for the purpose of providing health care services.

(b) No person shall be eligible to obtain a certificate of filing under subsection (2) of this section on or after the effective date of this Act.

(2) No person shall in this Commonwealth be, act as, or hold itself out as a provider-sponsored integrated health delivery network unless it holds a certificate of filing from the commissioner. Each provider-sponsored integrated health delivery network that seeks to offer services shall first be certified by the department.

(3) To qualify as a provider-sponsored integrated health delivery network, an applicant shall submit information acceptable to the department to satisfactorily demonstrate that the provider-sponsored integrated health delivery network:

(a) Is licensed and in good standing with the licensure boards for participating providers;

(b) Has demonstrated the capacity to administer the health plans it is offering;

(c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;

(d) Has the ability, policies, and procedures to conduct utilization management activities;

(e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;

(f) Is financially solvent;

(g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;

(h) Has the ability and procedures to monitor access to its provider network;

(i) Has a satisfactory grievance procedure and the ability to respond to enrollees' inquiries and complaints;

(j) Does not limit the participation of any health care provider in its provider network in another provider network;

(k) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;

(l) Does not discriminate in enrolling members;

(m) Participates in coordination of benefits;

(n) Uses standardized electronic claims and billing processes and formats; and

(o) Discloses to the cooperative reimbursement arrangements with providers.

(4) Fees for the following services shall be paid to the commissioner by every provider-sponsored integrated health delivery network, and the fees shall be the same as those for insurers as specified in Subtitle 4 of this chapter:

(a) For filing an application for a certificate of filing or amendment thereto;

(b) For filing an annual statement; and

(c) For other services deemed necessary by the commissioner.

(5) Provider-sponsored integrated health delivery networks shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

(a) Subtitle 1 -- Scope **-- *General Definitions and Provisions*** ~~[of Code]~~;

(b) Subtitle 2 -- ~~[Commissioner of the Department of]~~ Insurance ***Commissioner***;

(c) Subtitle 3 -- Authorization of Insurers and General Requirements;

(d) Subtitle 4 -- Fees and Taxes;

(e) Subtitle 5 -- Kinds of Insurance--Limits of Risk--Reinsurance;

(f) Subtitle 6 -- Assets and Liabilities;

(g) Subtitle 7 -- Investments;

(h) Subtitle 8 -- Administration of Deposits;

(i) Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;

(j) Subtitle 12 -- Trade Practices and Frauds;

(k) Subtitle 14 -- KRS 304.14-120 to 304.14-130 and 304.14-500 to 304.14-560;

(l) Subtitle 25 -- Continuity of Management;

(m) Subtitle 33 -- Insurers Rehabilitation and Liquidation;

(n) Subtitle 37 -- Insurance Holding Company Systems; and

(o) Subtitle 99 -- Penalties.

➔Section 7. KRS 304.37-010 is amended to read as follows:

As used in this subtitle, unless the context requires otherwise:

(1) "Affiliate" or person "affiliated" with a specific person means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;

(2) "Commissioner" means***:***

(a) The commissioner of insurance ***of this state;*** or~~[the Department of Insurance, as appropriate]~~

(b) ***When the context requires, the commissioner of insurance, or an equivalent official, of another state***;

(3) (a) "Control," "controlling," "controlled by," and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(b) Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing**,** made in the manner provided by KRS 304.37-020***(13),***~~[(12)]~~ that control does not exist in fact. The commissioner may determine, after forwarding all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(4) "Enterprise risk" means any activity, circumstance, event, or series of events involving one (1) or more affiliates of an insurer that, if not remedied promptly***:***~~[,]~~

(a) Is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including but not limited to anything that would cause the insurer's risk-based capital to fall into company action level as set forth in KRS 304.3-125 and administrative regulations promulgated thereunder***;*** or

(b) Would cause the insurer to be in hazardous financial condition in accordance with KRS 304.2-065;

(5) "Groupwide supervisor" means the regulatory official authorized to engage in conducting and coordinating groupwide supervision activities in accordance with KRS 304.37-160;

(6) "Insurance holding company system" means two (2) or more affiliated persons, one (1) or more of which is an insurer;

(7) "Insurer" ***has the same meaning as in KRS 304.1-040*** ~~[includes every person engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts of insurance]~~, except it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

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

(a) Includes an insurer registered under KRS 304.37-020; and

(b) Meets the following criteria:

1. Has premiums written in at least three (3) countries;

2. Has gross premiums written outside of the United States that are at least ten percent (10%) of the system's total gross written premiums; and

3. Based on a three (3) year rolling average:

a. Has total assets that are at least fifty billion dollars ($50,000,000,000); or

b. Has total gross written premiums that are at least ten billion dollars ($10,000,000,000)***;*** ~~[.]~~

(9) ***"NAIC" means the National Association of Insurance Commissioners;***

(10) "Person"***:***

(a) Means an individual, a corporation, a partnership, an association, a joint stock company, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert***; and*** ~~[, but]~~

(b) Shall not include any***:***

1. Bank in its fiduciary capacity***;*** or

2. Securities broker performing no more than the usual and customary broker's function;

(11) ~~[(10)]~~ "Subsidiary" of a specified person means an affiliate controlled by the person directly or indirectly through one (1) or more intermediaries;

(12) ~~[(11)]~~ "Supervisory college" means a forum for cooperation and communication between the involved supervisors established for the fundamental purpose of facilitating the effectiveness of supervision of entities which belong to an insurance group and facilitating both the supervision of the group as a whole on a groupwide basis and improving the legal entity supervision of the entities within the insurance group; and

(13) ~~[(12)]~~ "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

➔Section 8. KRS 304.37-020 is amended to read as follows:

(1) ***As used in this section:***

(a) ***"Group capital calculation instructions" means the group capital calculation instructions adopted or amended by the NAIC in accordance with procedures adopted by the NAIC; and***

(b) ***1.*** ***"NAIC Liquidity Stress Test Framework" means a separate NAIC publication that includes:***

a. ***A history of the NAIC's development of regulatory liquidity stress testing; and***

b. The following, as adopted or amended by the NAIC in accordance with procedures adopted by the NAIC:

i. The scope criteria applicable for a specific data year, and

ii. The liquidity stress test instructions and reporting templates for a specific data year.

2. As used in this paragraph, "scope criteria" means the designated exposure bases, along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.

(2) ***(a)*** Every insurer ***that***~~[which]~~ is authorized to do business in this state and~~[which]~~ is a member of an insurance holding company system shall register with the commissioner, except a foreign or alien insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile ***that***~~[which]~~ are substantially similar to those contained in this section.

(b) For an alien insurer, the domiciliary state shall be deemed to be its state of entry.

(c) Any insurer ***that***~~[which]~~ is subject to registration under this section shall register~~[within sixty (60) days after June 16, 1972, or]~~ fifteen (15) days after it becomes subject to registration~~[, whichever is later,]~~ and annually thereafter by April 1 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration~~[,]~~ and then**,** within the extended time.

(d) The commissioner may require any authorized insurer ***that***~~[which]~~ is a member of a holding company system ***but***~~[which]~~ is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(3)~~[(2)]~~ Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity of every member of the insurance holding company system;

(c) The following agreements in force, relationships subsisting, and transactions currently outstanding between ***the***~~[such]~~ insurer and its affiliates:

1. Loans to, other investments in, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

2. Purchases, sales, or exchanges of assets;

3. Transactions not in the ordinary course of business;

4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered in the ordinary course of the insurer's business;

5. All management and service contracts and all cost-sharing arrangements;

6. All reinsurance agreements;

7. Dividend and other distributions to shareholders; and

8. Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system;

(e) ***1.*** If requested by the commissioner, financial statements of, or within, an insurance holding company system, including all affiliates.

2. Financial statements may include but are not limited to annual audited financial statements filed with the United States Securities and Exchange Commission, pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1932, as amended.

3. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the United States Securities and Exchange Commission;

(f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

(g) Statements that the insurer's***:***

1. Board of directors oversees corporate governance and internal controls***;*** and~~[that the insurer's]~~

2. Officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(h) Any other information required by the commissioner through administrative regulations.

(4)~~[(3)]~~ ***(a)*** It shall not be necessary to disclose information on the registration statement filed pursuant to subsection ***(3)***~~[(2)]~~ of this section if the information is not material for the purposes of this section.

(b) Unless the commissioner by administrative regulation or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of one percent (0.5%) or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.

(c) The materiality guidelines provided in this subsection shall not apply for purposes of the information required under subsections (15) and (16) of this section.

(5)~~[(4)]~~ Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within thirty (30) days after the end of the month in which ***the insurer***~~[it]~~ learns of each change or addition.

(6)~~[(5)]~~ All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(7)~~[(6)]~~ Subject to KRS 304.37-030(5), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the dividend or distribution declaration.

(8)~~[(7)]~~ Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, if the information is reasonably necessary to enable the insurer to comply with the provisions of this subtitle.

(9)~~[(8)]~~ The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(10)~~[(9)]~~ The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(11)~~[(10)]~~ The commissioner may allow an insurer ***that***~~[which]~~ is authorized to do business in this state and which is part of an insurance holding company system to***:***

(a) Register on behalf of any affiliated insurer ***that***~~[which]~~ is required to register under subsection ***(2) of this section;***~~[(1)]~~ and~~[to]~~

(b) File all information and material required to be filed under this section.

(12)~~[(11)]~~ The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by administrative regulation or order ***exempts***~~[shall exempt]~~ it from the provisions of this section.

(13)~~[(12)]~~ ***(a)*** Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system.

(b) The disclaimer shall fully disclose all material relationships and bases for affiliation between the persons and the insurer as well as the basis for disclaiming the affiliation.

(c) A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed.

(d) In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted.

(e) The disclaiming party shall be relieved of its duty to register under this section if***:***

1. Approval of the disclaimer has been granted by the commissioner***;*** ~~[,]~~ or ~~[if]~~

2. The disclaimer is deemed to have been approved.

(14) ~~[(13)]~~ ***(a)*** ~~[On and after July 15, 2014,]~~The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report.

(b) The report shall***:*** ~~[,]~~

1. To the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer***; and*** ~~[. The report shall]~~

2. Be filed with the lead state commissioner of the insurance holding company system***,*** as determined by the procedures within the Financial Analysis Handbook adopted by the ***NAIC*** ~~[National Association of Insurance Commissioners]~~.

(15) (a) Except as provided in this subsection, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner.

(b) The report shall be:

1. Completed in accordance with the group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation; and

2. Filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC.

(c) An insurance holding company system shall be exempt from filing the group capital calculation if:

1. The system:

a. Has only one (1) insurer within its holding company structure;

b. Only writes business in its domestic state; and

c. Assumes no business from any other insurer;

2. a. The system is required to perform a group capital calculation specified by the United States Federal Reserve Board.

b. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

3. The system's non-United States groupwide supervisor is located within a reciprocal jurisdiction, as defined in Section 4 of this Act, that recognizes the United States state regulatory approach to group supervision and group capital; or

4. The system:

a. Provides information to the lead state that meets the requirements for accreditation under the NAIC Financial Regulation Standards and Accreditation Program, either directly or indirectly, through the groupwide supervisor, who has determined the

information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook; and

b. Has a non-United States groupwide supervisor, which is not in a reciprocal jurisdiction as defined in Section 4 of this Act, that recognizes and accepts, as specified by the commissioner in administrative regulation, the group capital calculation as the worldwide group capital assessment for United States insurance groups who operate in that jurisdiction.

(d) Notwithstanding the provisions of paragraphs (c)3. and (c)4. of this subsection, a lead state commissioner shall require the group capital calculation for the United States operations of any insurance holding company system not based in the United States where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for:

1. Prudential oversight and solvency monitoring purposes; or

2. Ensuring the competitiveness of the insurance marketplace.

(e) In addition to the exemptions established in paragraph (c) of this subsection, the lead state commissioner may exempt the ultimate controlling person from filing the annual group capital calculation or accept a limited group capital filing or report in accordance with criteria specified by the commissioner in administrative regulation.

(f) If the lead state commissioner determines that an insurance holding company system no longer meets one (1) or more of the requirements for an exemption from filing the group capital calculation under this subsection, the system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(16) (a) The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year's liquidity stress test.

(b) The filing shall be made to the lead state commissioner of the insurance holding company system, as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

(c) 1. The NAIC Liquidity Stress Test Framework shall include scope criteria:

a. Applicable to a specific data year; and

b. Reviewed at least annually by the NAIC's Financial Stability Task Force or its successor.

2. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when the changes are adopted.

3. a. Insurers meeting at least one (1) threshold of the scope criteria shall be considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the framework for that data year.

b. Insurers that do not trigger at least one (1) threshold of the scope criteria shall be considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the framework for that data year.

4. The lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, shall assess concerns related to insurers being scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis as part of the scope criteria determination for an insurer.

(d) The performance of, and the filing of the results from, a specified year's liquidity stress test shall comply with:

1. The NAIC Liquidity Stress Test Framework's instructions and reporting templates for that year; and

2. Any lead state commissioner determinations, made in consultation with the NAIC Financial Stability Task Force or its successor, provided within the NAIC Liquidity Stress Test Framework.

(17) ~~[(14)]~~ The failure to file a registration statement or any amendment thereto, a summary of the registration statement, ~~[or]~~an enterprise risk filing***, or any other filing or report*** required by this section within the time specified for the filing ***or report*** shall be a violation of this subtitle.

➔Section 9. KRS 304.37-050 is amended to read as follows:

(1) (a) Subject to paragraph (b) of this subsection ***and subsection (3) of this section***, all documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the commissioner or any other person in the course of an examination, analysis, or investigation made under KRS 304.37-040 and all information reported or provided to the department under KRS 304.37-020, 304.37-030, and 304.37-160~~[,]~~ shall:

1. Be confidential by law and privileged;~~[and]~~

2. Not be subject to:

a. The Kentucky Open Records Act, KRS 61.872 to 61.884;

b Subpoena; or

c. Discovery or admission into evidence in any private civil action***; and***

3. Be recognized as being proprietary and containing trade secrets.

(b) The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(c) The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.

(d) For purposes of the information reported and provided to the department pursuant to Section 8 of this Act, KRS 304.37-030, 304.37-040, and 304.37-160, the commissioner shall maintain the confidentiality of the:

1. Group capital calculation and the group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any United States groupwide supervisor; and

2. Liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United States groupwide supervisors.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom ***the*** ~~[such]~~ documents, materials, or other information are shared, pursuant to this subtitle, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including confidential and privileged documents, materials, or other information subject to subsection (1) of this section, ***including documents and materials containing trade secrets or proprietary information,*** with***:***

1. Other state, federal, and international regulatory agencies***;*** ~~[,]~~

2. The ***NAIC;*** ~~[National Association of Insurance Commissioners and its affiliates and subsidiaries,]~~

3. ***Any third-party consultants designated by the commissioner;*** and~~[with]~~

4. State, federal***,*** and international law enforcement authorities, including members of any supervisory college described in KRS 304.37-055***;***~~[,]~~

if the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain confidentiality;

(b) May only share confidential and privileged documents, materials, or other information reported pursuant to KRS 304.37-020***(14)***~~[(13)]~~, notwithstanding paragraph (a) of this subsection, with commissioners of states having statutes or regulations substantially similar to subsection (1) of this section, and who have agreed in writing not to disclose ***the***~~[such]~~ information;

(c) 1. May receive documents, materials, or other information, including confidential and privileged documents, materials, or other information***, including proprietary information or trade secrets,*** from the ***NAIC***~~[National Association of Insurance Commissioners]~~ and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic ***jurisdictions***~~[jurisdiction]~~; and

2. Shall maintain as confidential or privileged any documents, materials, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or other information; and

(d) Shall enter into written agreements with the ***NAIC and any third-party consultant designated by the commissioner***~~[National Association of Insurance Commissioners]~~ governing sharing and use of information provided pursuant to this subtitle~~[,]~~ ***and*** consistent with this subsection that:

1. Specify procedures and protocols regarding the confidentiality and security of information shared with the ***NAIC or a designated third-party consultant***~~[National Association of Insurance Commissioners and its affiliates and subsidiaries,]~~ pursuant to this subtitle, including procedures and protocols for sharing ***by*** the ***NAIC***~~[National Association of Insurance Commissioners]~~ with other state, federal, or international regulators***. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality***;

2. Specify that ownership of information shared with the ***NAIC or a third-party consultant***~~[National Association of Insurance Commissioners and its affiliates and subsidiaries,]~~ pursuant to this ***subtitle***~~[subsection,]~~ remains with the commissioner, and the ***NAIC's or a designated third-party consultant's***~~[National Association of Insurance Commissioners']~~ use of the information is subject to the direction of the commissioner;

3. ***Except for documents, material, or information reported pursuant to subsection (16) of Section 8 of this Act, prohibit the NAIC or designated third-party consultant from storing the information shared pursuant to this subtitle in a permanent database after the underlying analysis is completed;***

4. Require prompt notice be given to an insurer whose confidential information~~[,]~~ in the possession of the ***NAIC or a designated third-party consultant***~~[National Association of Insurance Commissioners,]~~ pursuant to this subtitle~~[,]~~ is subject to a request or subpoena to the ***NAIC or a designated third-party consultant***~~[National Association of Insurance Commissioners, pursuant to this subtitle,]~~ for disclosure or production;~~[and]~~

5.~~[4.]~~ Require the ***NAIC or a designated third-party consultant***~~[National Association of Insurance Commissioners and its affiliates and subsidiaries]~~ to consent to intervention by an insurer in any judicial or administrative action in which the ***NAIC or a designated third-party consultant***~~[National Association of Insurance Commissioners and its affiliates and subsidiaries]~~ may be required to disclose confidential information about the insurer shared with the ***NAIC or a designated third-party consultant pursuant to this subtitle; and***~~[National Association of Insurance Commissioners and its affiliates and subsidiaries]~~

6. ***For documents, material, or information reporting pursuant to subsection (16) of Section 8 of this Act, in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurers***.

(4) The sharing of information by the commissioner shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for administration, execution, and enforcement of this subtitle.

(5) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(6) Documents, materials, or information in the possession or control of the ***NAIC or a third-party consultant designated by the commissioner*** ~~[National Association of Insurance Commissioners and its affiliates and subsidiaries,]~~ pursuant to this subtitle~~[,]~~ shall:

(a) Be confidential by law and privileged; and

(b) Not be subject to:

1. The Kentucky Open Records Act, KRS 61.872 to 61.884;

2. Subpoena; or

3. Discovery or admission into evidence in any private civil action.

(7) (a) The group capital calculation and resulting group capital ratio, and the liquidity stress test along with its results and supporting disclosures, required under Section 8 of this Act are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally.

(b) Except as permitted under paragraph (c) of this subsection or as may otherwise be required under the provisions of this subtitle, no person shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public:

1. In a newspaper, magazine, or other publication;

2. In the form of a notice, circular, pamphlet, letter, or poster;

3. Over any radio or television station or any electronic means of communication available to the public; or

4. In any other way as an advertisement, announcement, or statement;

containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or insurer group or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business.

(c) If any materially false statement with respect to the:

1. Group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio; or

2. Liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures;

is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

➔Section 10. KRS 304.38-070 is amended to read as follows:

(1) ***Except as provided in subsection (5) of this section, the following*** ~~[This subsection]~~ applies to a corporation or limited liability company applying for and holding a certificate of authority as a health maintenance organization:

(a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation or limited liability company shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars ($1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars ($2,000,000);

(b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for ***that***~~[such]~~ authority immediately prior to July 15, 1986. ~~[Notwithstanding the other provisions hereof,]~~The exception provided in this paragraph shall cease to apply to any~~[such]~~ health maintenance organization from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and

(c) ***1.*** Each corporation authorized as a health maintenance organization shall at all times***:***

a. Maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars ($250,000)***;*** and~~[shall at all times]~~

b. Comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner.

2. A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency as required for ***that***~~[such]~~ authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any~~[such]~~ health maintenance organization from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.

(2) ***The following***~~[This subsection]~~ applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:

(a) Except as provided in paragraph (b) of this subsection***:***~~[,]~~

1. To qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars ($3,000,000) in its capital accounts***; and***~~[.]~~

2. Thereafter, a partnership authorized as a health maintenance organization shall***:***

a. Possess and maintain a total of at least one million two hundred fifty thousand dollars ($1,250,000) in its capital accounts***;*** and~~[shall]~~

b. Comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the commissioner; ***and***

(b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for ***that***~~[such]~~ authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.

(3) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with risk-based capital (RBC) requirements as follows:

(a) ***1.*** For purposes of this subsection, risk-based capital shall be determined in accordance with the risk-based capital requirements for health maintenance organizations established under this subtitle and any administrative regulation promulgated pursuant to KRS Chapter 13A, except as otherwise provided in this subsection.

2. ***The***~~[A]~~ corporation, partnership, or limited liability company~~[applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and~~

~~processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program]~~ shall comply with the same risk-based capital requirements as other health maintenance organizations, except that no additional phase-in or risk-based capital reports shall be required for 2000 or 2001, and the risk-based capital levels shall be established in accordance with paragraph (b) of this subsection;

(b) For the risk-based capital reports required to be filed by health maintenance organizations which manage care and process health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program, the risk-based capital levels shall be defined as follows:

1. "Company Action Level RBC" means the product of two (2.0) and its Authorized Control Level RBC;

2. "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;

3. "Authorized Control Level RBC" means the product of four-tenths (.40) and the risk-based capital after covariance determined under the risk-based capital formula in accordance with the RBC instruction; and

4. "Mandatory Control Level RBC" means the product of seven-tenths (.70) and the Authorized Control Level RBC; and

(c) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization managing care, processing health care claims, or providing health benefits to groups or individuals in addition to Medicaid-eligible and Kentucky Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle, and shall not be eligible to calculate its risk-based capital according to this subsection.

(4) As used in subsection (5) of this section:

(a) "MA organization" has the same meaning as in 42 C.F.R. sec. 422.2, as amended;

(b) 1. "Net worth" means the excess of total admitted assets over total admitted liabilities, but the liabilities shall not include fully subordinated debt or surplus notes as approved by the commissioner.

2. In determining net worth:

a. No debt shall be considered fully subordinated unless the debt is in a form approved by the commissioner;

b. Any interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated; and

c. The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.

3. For purposes of calculating a health maintenance organization's net worth, "admitted assets" includes the following, as may be subsequently modified by the commissioner:

a. Receivables due from persons that are not more than ninety (90) days past due;

b. Amounts due under reinsurance arrangements from insurance companies authorized to do business in this state;

c. Undisputed tax refunds or other receivables due from the United States or this state;

d. Amounts on deposit under KRS 304.38-073; and

e. Investments determined as allowable by the commissioner under this chapter.

4. When determining liabilities for purposes of calculating a health maintenance organization's net worth, the health maintenance organization shall include an amount estimated in the aggregate to provide for:

a. Any unearned premium;

b. The payment of all claims for health care expenditures:

i. That have been incurred, whether reported or unreported;

ii. That are unpaid; and

iii. For which the organization is or may be liable; and

c. The expense of adjustment or settlement of claims; and

(c) "Provider-sponsored integrated health delivery network" has the same meaning as in KRS 304.17A-005.

(5) The following applies to a corporation or limited liability company applying for or holding, or a provider-sponsored integrated health delivery network that elects to convert to and hold, a certificate of authority as a health maintenance organization that solely operates as an MA organization that meets the requirements of 42 C.F.R. sec. 422.400, as amended:

(a) The health maintenance organization shall possess, when first so authorized, an initial net worth of one million five hundred thousand dollars ($1,500,000);

(b) Thereafter, the health maintenance organization shall possess and maintain a minimum net worth equal to the greater of:

1. One million five hundred thousand dollars ($1,500,000); or

2. As reported on the most recent annual statement filed with the commissioner, an amount totaling:

a. Four percent (4%) of the first one hundred fifty million dollars ($150,000,000) of annual premium revenue; and

b. One and one-half percent (1.5%) of the annual premium revenue in excess of one hundred fifty million dollars ($150,000,000);

(c) To the extent permitted under federal law, the health maintenance organization shall:

1. Comply with the same risk-based capital requirements as other health maintenance organizations under subsection (1) of this section; and

2. Except as provided in paragraph (d) of this subsection, be subject to the provisions of this subtitle relating to licensing and solvency and to the following provisions of this chapter, to the extent applicable and not in conflict with the applicable provisions of this subtitle:

a. Subtitle 1 -- Scope -- General Definitions and Provisions;

b. Subtitle 2 -- Insurance Commissioner;

c. Subtitle 3 -- Authorization of Insurers and General Requirements;

d. Subtitle 4 -- Fees and Taxes;

e. Subtitle 5 -- Kinds of Insurance -- Limits of Risk – Reinsurance;

f. Subtitle 6 -- Assets and Liabilities;

g. Subtitle 7 -- Investments;

h. Subtitle 8 -- Administration of Deposits;

i. Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;

j. Subtitle 12 -- Trade Practices and Frauds;

k. Subtitle 25 -- Continuity of Management;

l. Subtitle 33 -- Insurers Rehabilitation and Liquidation;

m. Subtitle 37 -- Insurance Holding Company Systems; and

n. Subtitle 99 -- Penalties; and

(d) For purposes of determining compliance with KRS 304.38-073, the commissioner shall:

1. Take into account any and all deposits as may be held with other states; and

2. Coordinate with the other states to not require the health maintenance organization to have total deposits in all states that are greater than the amount required in the state with the highest deposit requirement.

➔SECTION 11. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "provided-sponsored integrated health delivery network" has the same meaning as in KRS 304.17A-005.

(2) A provider-sponsored integrated health delivery network may elect to convert to a health maintenance organization under subsection (5) of Section 10 of this Act by filing an election to convert with the commissioner that contains a notification of the network's effective date of conversion.

(3) Within thirty (30) days of the date of an election filing under subsection (2) of this section, the commissioner shall issue a certificate of authority as a health maintenance organization under subsection (5) of Section 10 of this Act to the provider-sponsored integrated health delivery network unless the commissioner:

(a) Finds that, at the time of the election, the provider-sponsored integrated health delivery network fails to meet the net worth requirements of subsection (5)(b) of Section 10 of this Act; and

(b) Provides the provider-sponsored integrated health delivery network with a written notice of the determination that contains a notice of the network's rights under KRS 304.2-310.

➔Section 12. KRS 304.38-200 is amended to read as follows:

Except as provided in subsection (5) of Section 10 of this Act, health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

(1) Subtitle 1 -- Scope -- General Definitions and Provisions;

(2) Subtitle 2 --~~[Commissioner of the Department of]~~Insurance ***Commissioner***;

(3) Subtitle 3 -- Authorization of Insurers and General Requirements;

(4) Subtitle 4 -- Fees and Taxes;

(5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;

(6) Subtitle 6 -- Assets and Liabilities;

(7) Subtitle 7 -- Investments;

(8) Subtitle 8 -- Administration of Deposits;

(9) Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;

(10) Subtitle 12 -- Trade Practices and Frauds;

(11) Subtitle 14 -- The Insurance Contract;

(12) Subtitle 17 -- Health Insurance Contracts;

(13) Subtitle 17A -- Health Benefit Plans;

(14) Subtitle 17B -- Kentucky Access;

(15) Subtitle 17C -- Limited Health Service Benefit Plans;

(16) Subtitle 18 -- Group and Blanket Health Insurance;

(17) Subtitle 24 -- Domestic Stock and Mutual Insurers;

(18) Subtitle 25 -- Continuity of Management;

(19) Subtitle 26 -- Insider Trading of Equity Securities;

(20) Subtitle 33 -- Insurers Rehabilitation and Liquidation;

(21) Subtitle 37 -- Insurance Holding Company Systems;

(22) Subtitle 47 -- Insurance Fraud; and

(23) Subtitle 99 -- Penalties.

➔Section 13. KRS 304.99-152 is amended to read as follows:

(1) Any insurer failing, without just cause, to file any registration statement as required by Subtitle 37 of this chapter, shall be required, after notice and hearing, to pay a civil penalty of ten thousand dollars ($10,000) for each day's delay to the commissioner. The maximum civil penalty under this section shall be one hundred thousand dollars ($100,000). The commissioner may reduce the civil penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) Every director or officer of an insurance holding company system who knowingly violates, participates in, assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to KRS 304.37-020***(2)*** ~~[(1)]~~, 304.37-030(2), or 304.37-030(5), or which violate Subtitle 37 of this chapter, shall pay, in their individual capacities, a civil penalty of not more than five thousand dollars ($5,000) per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the civil penalty with respect to the gravity of the violation, the history of previous violations, and other matters justice may require.

(3) If it appears that any insurer subject to Subtitle 37 of this chapter, or any director, officer, employee, or agent has engaged in any transaction or entered into any contract which is subject to KRS 304.37-030 and which would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contracts and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.

(4) If it appears that any insurer or any director, officer, employee, or agent has committed a willful violation of Subtitle 37 of this chapter, the commissioner may cause criminal proceedings to be instituted in the Circuit Court for the county in which the principal office of the insurer is located, or if the insurer has no office in Kentucky, in the Franklin Circuit Court against the insurer or the responsible director, officer, employee, or agent. Any insurer which willfully violates Subtitle 37 of this chapter, may be fined not more than one hundred thousand dollars ($100,000). Any individual who willfully violates Subtitle 37 of this chapter, may be fined in his or her individual capacity not more than one thousand dollars ($1,000), be imprisoned for not more than one (1) to three (3) years, or both.

(5) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under Subtitle 37 of this chapter, upon conviction, shall be imprisoned for not more than one (1) year or more than five (5) years, or fined ten thousand dollars ($10,000), or both. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.

(6) If it appears to the commissioner that any person has committed a violation of KRS 304.37-120 which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with Subtitle 33 of this chapter.

Signed by Governor April 8, 2022.