

CHAPTER 67**(HB 184)**

AN ACT relating to insurance.

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

➔Section 1. KRS 304.3-705 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, on or before December 31, ~~2030~~~~[2025]~~, a person may apply to the department for admission to the sandbox by submitting an application in the form prescribed by the commissioner, accompanied by the following:
 - (a) A filing fee of seven hundred fifty dollars (\$750);
 - (b) A detailed description of the innovation, which shall include:
 1. An explanation of how the innovation will:
 - a. Add value to customers and serve the public interest;
 - b. Be economically viable for the applicant;
 - c. Provide suitable consumer protection; and
 - d. Not pose an unreasonable risk of consumer harm;
 2. A detailed description of the statutory and regulatory issues that may prevent the innovation from being currently utilized, issued, sold, solicited, distributed, or advertised in the market;
 3. A description of how the innovation functions and the manner in which it will be offered or provided;
 4. If the innovation involves the use of software, hardware, or other technology developed for the purpose of implementing or operating it, a technical white paper setting forth a description of the operation and general content of technology to be utilized, including:
 - a. The problem addressed by that technology; and
 - b. The interaction between that technology and its users;
 5. If the innovation involves the issuance of a policy of insurance, a statement that either:
 - a. If the applicant will be the insurer on the policy, that the applicant holds a valid certificate of authority and is authorized to issue the insurance coverage in question; or
 - b. If some other person will be the insurer on the policy, that the other person holds a valid certificate of authority and is authorized to issue the insurance coverage in question; and
 6. A statement by an officer of the applicant certifying that no product, process, method, or procedure substantially similar to the innovation has been used, sold, licensed, or otherwise made available in this Commonwealth before the effective filing date of the application;
 - (c) The name, contact information, and bar number of the applicant's insurance regulatory counsel, which shall be a person with experience providing insurance regulatory compliance advice;
 - (d) A detailed description of the specific conduct that the applicant proposes should be permitted by the limited no-action letter;
 - (e) Proposed terms and conditions to govern the applicant's beta test, which shall include:
 1. Citation to the provisions of Kentucky law that should be excepted in the notice of acceptance issued under KRS 304.3-710(6); and
 2. Any request for an extension of the time period for a beta test under KRS 304.3-720(1) and the grounds for the request;

- (f) Proposed metrics by which the department may reasonably test the innovation's utility during the beta test;
 - (g) Disclosure of all:
 - 1. Persons who are directors and executive officers of the applicant;
 - 2. General partners of the applicant if the applicant is a limited partnership;
 - 3. Members of the applicant if the applicant is a limited liability applicant;
 - 4. Persons who are beneficial owners of ten percent (10%) or more of the voting securities of the applicant;
 - 5. Other persons with direct or indirect power to direct the management and policies of the applicant by contract, other than a commercial contract for goods or nonmanagement services; and
 - 6. Conflicts of interest with respect to any person listed in this paragraph and the department;
 - (h) A statement that the applicant has funds of at least twenty-five thousand dollars (\$25,000) available to guarantee its financial stability through one (1) or a combination of any of the following:
 - 1. A contractual liability insurance policy;
 - 2. A surety bond issued by an authorized surety;
 - 3. Securities of the type eligible for deposit by authorized insurers in this Commonwealth;
 - 4. Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this Commonwealth and has deposited money of the United States in an amount equal to the amount required by this paragraph that is not available for withdrawal, except by direct order of the commissioner;
 - 5. A letter of credit issued by a qualified United States financial institution as defined in KRS 304.9-700; or
 - 6. Another form of security authorized by the commissioner; and
 - (i) A statement confirming that the applicant is not seeking authorization for, nor shall it engage in, any conduct that would render the applicant unauthorized to make an application under subsection (2) of this section.
- (2) (a) The following persons shall not be authorized to make an application to the department for admission to the sandbox:
- 1. Any person seeking to sell or license an insurance innovation directly to any federal, state, or local government entity, agency, or instrumentality as the insured person or end user of the innovation;
 - 2. Any person seeking to sell, license, or use an insurance innovation that is not in compliance with subsection (1)(b)5. of this section;
 - 3. Any person seeking to make an application that would result in the person having more than five (5) active beta tests ongoing within the Commonwealth at any one (1) time; and
 - 4. Any person seeking a limited or extended no-action letter or exemption from any administrative regulation or statute concerning:
 - a. Assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers;
 - b. Required participation in any assigned risk plan, residual market, or guaranty fund;
 - c. Any licensing or certificate of authority requirements; or
 - d. The application of any taxes or fees.
- (b) For the purposes of this subsection, "federal, state, or local government entity, agency, or instrumentality" includes any county, city, municipal corporation, urban-county government, charter

county government, consolidated local government, unified local government, special district, special purpose governmental entity, public school district, or public institution of education.

- (3) Notwithstanding any other provision of this chapter, a person regulated under this chapter may participate in the regulatory sandbox described in KRS 15.268 if the person is:

- (a) Not authorized to make an application under this section; or
- (b) Seeking regulatory relief that is not available under KRS 304.3-700 to 304.3-735.

➔Section 2. KRS 304.3-735 is amended to read as follows:

- (1) One hundred twenty days (120) days prior to the start of the ~~{2021, 2022, 2023, 2024, and 2025}~~**2026, 2027, 2028, 2029, and 2030** regular sessions of the General Assembly, the commissioner shall submit a written report to the Interim Joint Committee on Banking and Insurance that meets the requirements of subsection (2) of this section. Thereafter, the commissioner shall submit the report annually, upon request.
- (2) The report shall include the following:
 - (a) The number of:
 - 1. Applications filed and accepted;
 - 2. Beta tests conducted; and
 - 3. Extended letters issued;
 - (b) A description of the innovations tested;
 - (c) The length of each beta test;
 - (d) The results of each beta test;
 - (e) A description of each safe harbor created under KRS 304.3-725;
 - (f) The number and types of orders or other actions taken by the commissioner or any other interested party under KRS 304.3-700 to 304.3-725;
 - (g) Identification of any statutory barriers for consideration of amendment by the General Assembly following successful beta tests and the issuance of extended letters; and
 - (h) Any other information or recommendations deemed relevant by the commissioner.
- (3) The commissioner shall also provide the Interim Joint Committee on Banking and Insurance a detailed briefing, upon request, to discuss and explain any report submitted under this section.

➔SECTION 3. A NEW SECTION OF SUBTITLE 33 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of this subtitle or statute to the contrary:

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

- (a) 1. *"Netting agreement":*
 - a. *Means an agreement, including a master agreement or bridge agreement for one (1) or more master agreements, that:*
 - i. *Documents one (1) or more transactions between parties to the agreement for or involving one (1) or more qualified financial contracts; and*
 - ii. *Provides for the netting or liquidation of qualified financial contracts among the parties to the agreement; and*
 - b. *Except as provided in subparagraph 2. of this paragraph, includes any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in this paragraph.*
- 2. *Any contract or agreement described in this paragraph relating to agreements or transactions that are not qualified financial contracts shall be deemed a netting agreement only with respect to those agreements or transactions that are qualified financial contracts.*

3. *A master agreement, or bridge agreement for one (1) or more master agreements, together with all schedules, confirmations, definitions, addenda thereto, and transactions under any thereof, shall be treated as one (1) agreement.*
4. *As used in this paragraph:*
 - a. *"Agreement" includes any terms and conditions incorporated by reference in the agreement; and*
 - b. *"Netting or liquidation of qualified financial contracts" includes netting or liquidation of:*
 - i. *Present or future payment obligations or payment entitlements under qualified financial contracts; and*
 - ii. *Liquidation or closeout values relating to present or future payment obligations or payment entitlements under qualified financial contracts; and*
- (b) *"Qualified financial contract" means any:*
 1. *Commodity contract;*
 2. *Forward contract;*
 3. *Repurchase agreement;*
 4. *Securities contract;*
 5. *Swap agreement; or*
 6. *Similar agreement specified by the commissioner in an administrative regulation promulgated in accordance with KRS Chapter 13A;*
- (2) *A person shall not be stayed or prohibited from exercising any of the following rights:*
 - (a) 1. *A contractual right to terminate, liquidate, close out, or accelerate any netting agreement or qualified financial contract with an insurer due to:*
 - a. *The insolvency, financial condition, or default of the insurer, if such right is enforceable under applicable law other than this subtitle; or*
 - b. *The commencement of a formal delinquency proceeding under this subtitle.*
 2. *As used in this paragraph, "contractual right" includes any right arising under:*
 - a. *Statutory or common law;*
 - b. *Rules or bylaws of a national securities exchange, clearing organization, or securities clearing agency;*
 - c. *Rules, bylaws, or resolutions of the governing body of a swap execution facility, designated contract market, board of trade, or any clearing organization relating to any of the foregoing; or*
 - d. *The law merchant;*
- (b) *The right to enforce any pledge, security, collateral, guarantee agreement, or other credit support document related to a netting agreement or qualified financial contract; or*
- (c) *Subject to subsection (3) of this section, the right to setoff or net any termination value, payment amount, or other transfer obligation arising under a netting agreement or qualified financial contract if the counterparty or its guarantor is organized under the laws of the United States, a state of the United States, or a foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting;*
- (3) (a) *Upon termination of a netting agreement or qualified financial contract:*
 1. *The net or settlement amount owed by a nondefaulting party to an insurer against which a delinquency proceeding has been initiated shall be transferred to, or on the order of, the receiver, even if the insurer is the defaulting party;*

2. *Any limited two-way payment provision in a netting agreement or qualified financial contract with an insurer that has defaulted shall be deemed a full two-way payment provision as against the defaulting insurer; and*
3. *Any amount referenced in subparagraph 1. of this paragraph, except to the extent it is subject to secondary liens or encumbrances, shall be considered a general asset of the insurer.*
- (b) *If a counterparty to a netting agreement or a qualified financial contract with an insurer against which a delinquency proceeding has been initiated terminates, liquidates, closes out, or accelerates the agreement or contract:*
 1. *Damages shall be measured as of the date or dates of termination, liquidation, close out, or acceleration; and*
 2. *The amount of the claim for damages shall be actual direct compensatory damages calculated in accordance with subsection (7) of this section;*
- (4) *A receiver shall not transfer a netting agreement or qualified financial contract of an insurer unless the receiver transfers to one (1) counterparty, other than an insurer subject to a delinquency proceeding, all:*
 - (a) *Netting agreements and qualified financial contracts between that counterparty, or any affiliate of the counterparty, and the insurer; and*
 - (b) *Rights, obligations, guarantees, collateral, and credit support documents related to the agreements and contracts referenced in paragraph (a) of this subsection;*
- (5) (a) *If a receiver transfers a netting agreement or qualified financial contract, the receiver shall make best efforts to notify all counterparties to the agreement or contract by noon, local time, of the next business day following the transfer.*
 - (b) *As used in this subsection, "business day" means any day that is not a Saturday, a Sunday, or a day on which the New York Stock Exchange or the Federal Reserve Bank of New York is closed;*
- (6) (a) *Except as provided in paragraph (b) of this subsection, a transfer of money or other property made under a netting agreement or qualified financial contract, including under any pledge, security, collateral, guarantee arrangement, or other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, before the commencement of a delinquency proceeding shall not be:*
 1. *Deemed fraudulent under this subtitle; or*
 2. *Avoided by the receiver.*
 - (b) *A transfer may be deemed fraudulent and may be avoided by the receiver under Section 8 of this Act if the transfer is made with actual intent to hinder, delay, or defraud the insurer, the receiver, or any creditor;*
- (7) (a) *If a receiver elects to disavow, reject, or repudiate a netting agreement or qualified financial contract of an insurer under Section 6 of this Act or any other section of this subtitle, the receiver shall disavow, reject, or repudiate the entire netting agreement or qualified financial contract between the insurer and a counterparty, or any affiliate of the counterparty, including all related transactions in their entirety.*
 - (b) *If the receiver disavows, rejects, or repudiates a netting agreement or qualified financial contract, a counterparty's claim against the estate of the insurer shall be:*
 1. *Determined as if the claim arose before the date of:*
 - a. *Except as provided in subdivision b. of this subparagraph, the petition for liquidation; or*
 - b. *If a rehabilitation proceeding was converted to a liquidation, the petition for rehabilitation; and*
 2. *Limited to actual direct compensatory damages, determined as of the date of disavowal, rejection, or repudiation.*
 - (c) *As used in paragraph (b) of this subsection, "actual direct compensatory damages":*

1. *Includes normal and reasonable costs of cover or industry-standard damages calculations that are applicable in the derivatives, securities, or other applicable market; and*
 2. *Does not include punitive damages, lost profits, lost opportunities, or pain and suffering;*
- (8) *This section shall not apply to netting agreements and qualified financial contracts between an insurer and any of its affiliates; and*
- (9) *All rights of a counterparty under this section shall apply to netting agreements and qualified financial contracts entered into on behalf of:*
- (a) *The general account of the insurer; and*
 - (b) *Any separate account of the insurer, if the assets of the separate account are available only to a counterparty to the netting agreements and qualified financial contracts entered into on behalf of that separate account.*

➔Section 4. KRS 304.33-050 is amended to read as follows:

- (1) Except as provided in KRS 304.33-052 *and Section 3 of this Act*, any receiver appointed in a proceeding under this subtitle may at any time apply for and any court of general jurisdiction may grant such restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary and proper to prevent:
- (a) The transaction of further business by or on behalf of the insurer;
 - (b) The transfer of property against which the receiver has a claim;
 - (c) Interference with the receiver or with the proceedings;
 - (d) Waste of the insurer's assets;
 - (e) Dissipation and transfer of bank accounts;
 - (f) The institution or further prosecution of any actions or proceedings by or on behalf of the insurer;
 - (g) The institution or further prosecution of any action against the receiver or the insurer, including but not limited to interpleader or other actions involving assets against which the receiver has a claim;
 - (h) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer or its assets;
 - (i) The levying of execution against the insurer or its assets;
 - (j) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
 - (k) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer;
 - (l) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of the proceeding; or
 - (m) Any suit or other action against a reinsurer of the insurer.
- (2) The receiver may apply to any court outside of this state for the relief described in subsection (1) of this section.

➔Section 5. KRS 304.33-170 is amended to read as follows:

- (1) Stays in pending litigation. Except as provided in KRS 304.33-052 *and Section 3 of this Act*, any court in this state before which any action or proceeding by or against an insurer is pending when a rehabilitation order against the insurer is entered shall, upon request of the rehabilitator, stay the action or proceeding for such time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The court that entered the rehabilitation order shall order the rehabilitator to take such action respecting the pending litigation as the court deems necessary in the interests of justice and for the protection of creditors and policyholders. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

- (2) Statutes of limitations on claims by insurer. The time between the filing of a petition for rehabilitation against an insurer and denial of the petition or an order of rehabilitation shall not be considered to be a part of the time within which any action may be commenced by the insurer. Any action by the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the order of rehabilitation is entered.
- (3) Statutes of limitations on claims against insurer. The time between the filing of a petition for rehabilitation against an insurer and the denial of the petition or an order of rehabilitation shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the order of rehabilitation is entered or the petition is denied.
- (4) A guaranty association or a foreign guaranty association shall have standing to appear in any court proceeding concerning the rehabilitation of an insurer if such association is or may become liable to act as a result of the rehabilitation.

➔Section 6. KRS 304.33-240 is amended to read as follows:

The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. *Subject to Section 3 of this Act*, the liquidator may:

- (1) Appoint a special deputy to act for him or her under this subtitle, and, subject to the court's approval, determine his or her compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;
- (2) Appoint or engage employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel he or she deems necessary to assist in the liquidation;
- (3) Fix the compensation of persons under subsection (2) of this section, subject to the control of the court;
- (4) Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of any available appropriation. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the Department of Insurance out of the first available moneys of the insurer;
- (5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his or her testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, record, or other documents which he or she deems relevant to the inquiry;
- (6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions to marshal the assets of the insurer; forestall garnishment and attachment proceedings against such debts; do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including sell, compound, compromise, or assign for purposes of collection, subject to court approval and upon such terms and conditions as the liquidator deems best, any disputed claims; and pursue any creditor's remedies available to enforce his or her claims. In lieu of collecting funds representing unearned premium of a policyholder which are in the possession of the insurer's agent with respect to the kinds of direct insurance protected under KRS 304.36-030, the liquidator may authorize the use of such funds to replace the insurance coverage terminated pursuant to KRS 304.33-210, upon receipt from the agent of appropriate notice of such replacement of the insurance coverage with an insurer within sixty (60) days after the date of the liquidation order;
- (7) Audit the books and records of all agents of the insurer insofar as these records relate to the business activities of the insurer;
- (8) Conduct public and private sales of the property of the insurer in a manner prescribed by the court;
- (9) Use assets of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under KRS 304.33-430;
- (10) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, except that no transaction involving property the market value of which exceeds ten thousand dollars (\$10,000) shall be concluded without express permission of the court. The liquidator also may execute,

acknowledge, and deliver any deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be filed with the county clerk for the county in which the property is located a certified copy of the order appointing him or her;

- (11) Borrow money, subject to court approval, on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;
- (12) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party, except the liquidator shall not disavow, reject, or repudiate a federal home loan bank security agreement or any pledge agreement, security agreement, collateral agreement, guarantee agreement, or other similar arrangement or credit enhancement relating to a security agreement to which a federal home loan bank is a party;
- (13) Continue to prosecute and institute in the name of the insurer or in his or her own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under KRS 304.33-220, he or she may apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;
- (14) Prosecute any action which may exist ~~on~~ⁱⁿ behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person;
- (15) Remove any records and property of the insurer to the offices of the commissioner or to such other place as is convenient for the purposes of efficient and orderly execution of the liquidation;
- (16) Deposit in one (1) or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;
- (17) File any necessary documents for record in the office of any county clerk or record office in this state or elsewhere where property of the insurer is located;
- (18) Assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition for liquidation has been filed shall not bind the liquidator;
- (19) Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by law and that is not included within KRS 304.33-290 to 304.33-310, inclusive;
- (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered;
- (21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;
- (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this subtitle; and
- (23) The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him or her, nor does it exclude his or her right to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

➔Section 7. KRS 304.33-260 is amended to read as follows:

- (1) Written notice. Every person who receives notice in the form prescribed in KRS 304.33-250 that an insurer for which he *or she* has acted as agent is the subject of a liquidation order shall as soon as practicable give notice of the liquidation order. The notice shall be sent by first-class mail to the last address contained in the agent's records to each policyholder or other person named in any policy issued through the agent by the company, if he *or she* has a record of the address of the policyholder or other person. A policy shall be deemed issued through an agent if the agent has a property interest in the expiration of the policy; or if the agent has had in his *or her* possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the agent, identification of the policy impaired, and the nature of the impairment under KRS 304.33-210. Notice by a general agent shall satisfy the notice requirement for any agents under contract to him *or her*.

- (2) Oral notice. So far as practicable, every insurance agent subject to subsection (1) of this section shall give immediate oral notice, by telephone or otherwise, of the liquidation order to the same persons to whom he *or she* is obligated to give written notice. The oral notice shall include substantially the same information as the written notice.
- (3) The liquidator may waive the duties imposed by this section if he *or she* determines that other notice to the policyholders of the insurer under liquidation is adequate.
- (4) Transfer of assets. Every agent subject to subsection (1) of this section shall, immediately upon receiving notice pursuant to KRS 304.33-250, and not later than thirty (30) days thereafter, except as otherwise ~~expressly~~ provided under **Section 3 of this Act or** KRS 304.33-240(6), transfer all assets of the insurer in possession of the agent as of the date of liquidation or any time thereafter to the liquidator. If there is any dispute as to whether assets which an agent is holding are assets of the insurer, the agent shall petition the court for an order determining the ownership thereof.

➔Section 8. KRS 304.33-290 is amended to read as follows:

- (1) Definition and effect. Except as provided in subsection (5) of this section **and Section 3 of this Act:** ~~§~~
 - (a) Every transfer made or suffered and every obligation incurred by an insurer within one (1) year prior to the filing of a successful petition for rehabilitation or liquidation under this subtitle shall be fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors; ~~§~~
 - (b) A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this subtitle, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value; and except that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment; **and** ~~§~~
 - (c) The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.
- (2) Perfection of transfers.
 - (a) Personal property. A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under subsection (3) of KRS 304.33-310.
 - (b) Real property. A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.
 - (c) Equitable liens. A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.
 - (d) Transfer not perfected prior to petition. Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.
 - (e) Actual creditors unnecessary. This subsection shall apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.
- (3) Fraudulent reinsurance transactions. Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:
 - (a) The transaction consists of the termination, adjustment or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and
 - (b) Any part of the transaction took place within one (1) year prior to the date of filing of the petition through which the receivership was commenced.

- (4) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under this section shall be personally liable therefor and shall be bound to account to the liquidator.
- (5) (a) Except as provided in paragraph (b) of this subsection, any transfer of, and any obligation to transfer, money or other property from an insurer-member to the federal home loan bank under a federal home loan bank security, pledge, collateral, or guarantee agreement, or other similar arrangement or credit enhancement, shall not be deemed fraudulent and shall not be avoided by the receiver under subsection (1) of this section if the agreement, arrangement, or enhancement is:
 - 1. Made in the ordinary course of business; and
 - 2. Made in compliance with the applicable federal home loan bank agreement.
- (b) A transfer may be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if the transfer is made with the intent to hinder, delay, or defraud:
 - 1. An insurer-member;
 - 2. The receiver of the insurer-member; or
 - 3. Existing or future creditors of the insurer-member.

➔Section 9. KRS 304.33-300 is amended to read as follows:

Except as provided in Section 3 of this Act:

- (1) Effect of petition: real property. After a petition for rehabilitation or liquidation, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk in the county where any real property in question is located shall be constructive notice of the commencement of a proceeding in rehabilitation or liquidation. The exercise by a court of the United States or any state of jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale;~~{-}~~
- (2) Effect of petition: personal property. After a petition for rehabilitation or liquidation and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:
 - (a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;
 - (b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his or her order, with the same effect as if the petition were not pending;
 - (c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith unless he or she has reasonable cause to believe that the petition is not well founded; and
 - (d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or in behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator;~~{-}~~
- (3) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under this section shall be personally liable therefor and shall be bound to account to the liquidator; **and**~~{-}~~
- (4) Negotiability. Nothing in this subtitle shall impair the negotiability of currency or negotiable instruments.

➔Section 10. KRS 304.33-310 is amended to read as follows:

Except as provided in Section 3 of this Act:

- (1) Preferences.

- (a) Preference defined. A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt made or suffered by the insurer within one (1) year before the filing of a successful petition for liquidation under this subtitle, the effect of which transfer may be to enable the creditor to obtain a greater percentage of his *or her* debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, transfers otherwise qualifying shall be deemed preferences if made or suffered within one (1) year before the filing of the successful petition for rehabilitation or within two (2) years before the filing of the successful petition for liquidation, whichever time is shorter.
- (b) Invalidation of preferences. Except as provided in subsection (10) of this section, any preference may be avoided by the liquidator, if:
 - 1. The insurer was insolvent at the time of the transfer;
 - 2. The transfer was made within four (4) months before the filing of the petition;
 - 3. The creditor receiving it or to be benefited thereby or his *or her* agent acting with reference thereto had reasonable cause to believe at the time when the transfer was made that the insurer was insolvent or was about to become insolvent; or
 - 4. The creditor receiving it was an officer, employee, attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he *or she* held such position, or any shareholder holding directly or indirectly more than five percent (5%) of any class of any equity security issued by the insurer, or any other person with whom the insurer did not deal at arm's length.

Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except a bona fide purchaser from or lienor of the debtor's transferee for a present fair equivalent value. Where the bona fide purchaser or lienor has given less than fair equivalent value, he *or she* shall have a lien upon the property to the extent of the consideration actually given by him *or her*. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator; ~~and~~

(2) Perfection of transfers.

- (a) Personal property. A transfer of property other than real property is deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.
- (b) Real property. A transfer of real property is deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of transferee.
- (c) Equitable liens. A transfer which creates an equitable lien is not deemed to be perfected if there are available means by which a legal lien could be created.
- (d) Transfers not perfected prior to petition. A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.
- (e) Actual creditors unnecessary. This subsection applies whether or not there were creditors who might have obtained liens or persons who might have become bona fide purchasers; ~~and~~

(3) Liens by legal or equitable proceedings.

- (a) Definition. A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution or like process, whether before, upon or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.
- (b) When liens are superior. A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (2) of this section, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the

respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action, or ruling;{+}

- (4) Twenty-one day rule. A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (2) of this section to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one (21) days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration;{+}
- (5) Indemnifying transfers also voidable. If any lien deemed voidable under paragraph (b) of subsection (1) of this section has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this subtitle which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable;{+}
- (6) Avoidance of lien. The property affected by any lien deemed voidable under paragraph (b) of subsection (1) of this section and subsection (5) of this section is discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order the lien to be preserved for the benefit of the estate and the court may direct that a conveyance be executed which is adequate to evidence the title of the liquidator;{+}
- (7) Hearings to determine rights. The court shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court fixes;{+}
- (8) Surety's liability discharged. The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided or, where the property is retained under subsection (7) of this section to the extent of the amount paid to the liquidator;{+}
- (9) Setoff of new advances. If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him *or her; and*;{+}
- (10) Federal home loan bank preferences. A liquidator shall not avoid any preference arising under, or in connection with, a federal home loan bank security agreement or any pledge agreement, security agreement, collateral agreement, guarantee agreement, or other similar arrangement or credit enhancement relating to a security agreement to which a federal home loan bank is a party.

➔Section 11. KRS 304.33-330 is amended to read as follows:

- (1) Set-offs allowed in general. Mutual debt or mutual credits between the insurer and another person in connection with any action or proceeding under this subtitle shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) of this section.
- (2) Exceptions. *Except as provided in Section 3 of this Act*, no set-off or counterclaim shall be allowed in favor of any person where:
 - (a) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle him *or her* to share as a claimant in the assets of the insurer;

- (b) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a set-off;
- (c) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or
- (d) The obligation of the person is to pay earned premiums to the insurer. However, the provisions of this paragraph shall only apply to reinsurance contracts entered into prior to July 13, 2004.

Signed by Governor March 24, 2025.