

1 AN ACT relating to the insurance regulatory sandbox.

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

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

- 4 (1) Except as provided in subsection (2) of this section, on or before December 31,
5 2030~~[2025]~~, a person may apply to the department for admission to the sandbox by
6 submitting an application in the form prescribed by the commissioner, accompanied
7 by the following:
- 8 (a) A filing fee of seven hundred fifty dollars (\$750);
 - 9 (b) A detailed description of the innovation, which shall include:
 - 10 1. An explanation of how the innovation will:
 - 11 a. Add value to customers and serve the public interest;
 - 12 b. Be economically viable for the applicant;
 - 13 c. Provide suitable consumer protection; and
 - 14 d. Not pose an unreasonable risk of consumer harm;
 - 15 2. A detailed description of the statutory and regulatory issues that may
16 prevent the innovation from being currently utilized, issued, sold,
17 solicited, distributed, or advertised in the market;
 - 18 3. A description of how the innovation functions and the manner in which
19 it will be offered or provided;
 - 20 4. If the innovation involves the use of software, hardware, or other
21 technology developed for the purpose of implementing or operating it, a
22 technical white paper setting forth a description of the operation and
23 general content of technology to be utilized, including:
 - 24 a. The problem addressed by that technology; and
 - 25 b. The interaction between that technology and its users;
 - 26 5. If the innovation involves the issuance of a policy of insurance, a
27 statement that either:

- 1 a. If the applicant will be the insurer on the policy, that the applicant
2 holds a valid certificate of authority and is authorized to issue the
3 insurance coverage in question; or
- 4 b. If some other person will be the insurer on the policy, that the
5 other person holds a valid certificate of authority and is authorized
6 to issue the insurance coverage in question; and
- 7 6. A statement by an officer of the applicant certifying that no product,
8 process, method, or procedure substantially similar to the innovation has
9 been used, sold, licensed, or otherwise made available in this
10 Commonwealth before the effective filing date of the application;
- 11 (c) The name, contact information, and bar number of the applicant's insurance
12 regulatory counsel, which shall be a person with experience providing
13 insurance regulatory compliance advice;
- 14 (d) A detailed description of the specific conduct that the applicant proposes
15 should be permitted by the limited no-action letter;
- 16 (e) Proposed terms and conditions to govern the applicant's beta test, which shall
17 include:
- 18 1. Citation to the provisions of Kentucky law that should be excepted in
19 the notice of acceptance issued under KRS 304.3-710(6); and
- 20 2. Any request for an extension of the time period for a beta test under
21 KRS 304.3-720(1) and the grounds for the request;
- 22 (f) Proposed metrics by which the department may reasonably test the
23 innovation's utility during the beta test;
- 24 (g) Disclosure of all:
- 25 1. Persons who are directors and executive officers of the applicant;
- 26 2. General partners of the applicant if the applicant is a limited partnership;
- 27 3. Members of the applicant if the applicant is a limited liability applicant;

- 1 4. Persons who are beneficial owners of ten percent (10%) or more of the
- 2 voting securities of the applicant;
- 3 5. Other persons with direct or indirect power to direct the management
- 4 and policies of the applicant by contract, other than a commercial
- 5 contract for goods or nonmanagement services; and
- 6 6. Conflicts of interest with respect to any person listed in this paragraph
- 7 and the department;
- 8 (h) A statement that the applicant has funds of at least twenty-five thousand
- 9 dollars (\$25,000) available to guarantee its financial stability through one (1)
- 10 or a combination of any of the following:
- 11 1. A contractual liability insurance policy;
- 12 2. A surety bond issued by an authorized surety;
- 13 3. Securities of the type eligible for deposit by authorized insurers in this
- 14 Commonwealth;
- 15 4. Evidence that the applicant has established an account payable to the
- 16 commissioner in a federally insured financial institution in this
- 17 Commonwealth and has deposited money of the United States in an
- 18 amount equal to the amount required by this paragraph that is not
- 19 available for withdrawal, except by direct order of the commissioner;
- 20 5. A letter of credit issued by a qualified United States financial institution
- 21 as defined in KRS 304.9-700; or
- 22 6. Another form of security authorized by the commissioner; and
- 23 (i) A statement confirming that the applicant is not seeking authorization for, nor
- 24 shall it engage in, any conduct that would render the applicant unauthorized to
- 25 make an application under subsection (2) of this section.
- 26 (2) (a) The following persons shall not be authorized to make an application to the
- 27 department for admission to the sandbox:

- 1 1. Any person seeking to sell or license an insurance innovation directly to
2 any federal, state, or local government entity, agency, or instrumentality
3 as the insured person or end user of the innovation;
- 4 2. Any person seeking to sell, license, or use an insurance innovation that
5 is not in compliance with subsection (1)(b)5. of this section;
- 6 3. Any person seeking to make an application that would result in the
7 person having more than five (5) active beta tests ongoing within the
8 Commonwealth at any one (1) time; and
- 9 4. Any person seeking a limited or extended no-action letter or exemption
10 from any administrative regulation or statute concerning:
 - 11 a. Assets, deposits, investments, capital, surplus, or other solvency
12 requirements applicable to insurers;
 - 13 b. Required participation in any assigned risk plan, residual market,
14 or guaranty fund;
 - 15 c. Any licensing or certificate of authority requirements; or
 - 16 d. The application of any taxes or fees.
- 17 (b) For the purposes of this subsection, "federal, state, or local government entity,
18 agency, or instrumentality" includes any county, city, municipal corporation,
19 urban-county government, charter county government, consolidated local
20 government, unified local government, special district, special purpose
21 governmental entity, public school district, or public institution of education.
- 22 (3) Notwithstanding any other provision of this chapter, a person regulated under this
23 chapter may participate in the regulatory sandbox described in KRS 15.268 if the
24 person is:
 - 25 (a) Not authorized to make an application under this section; or
 - 26 (b) Seeking regulatory relief that is not available under KRS 304.3-700 to 304.3-
27 735.

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

2 (1) One hundred twenty days (120) days prior to the start of the ~~{2021, 2022, 2023,~~
3 ~~2024, and 2025}~~2026, 2027, 2028, 2029, and 2030 regular sessions of the General
4 Assembly, the commissioner shall submit a written report to the Interim Joint
5 Committee on Banking and Insurance that meets the requirements of subsection (2)
6 of this section. Thereafter, the commissioner shall submit the report annually, upon
7 request.

8 (2) The report shall include the following:

9 (a) The number of:

10 1. Applications filed and accepted;

11 2. Beta tests conducted; and

12 3. Extended letters issued;

13 (b) A description of the innovations tested;

14 (c) The length of each beta test;

15 (d) The results of each beta test;

16 (e) A description of each safe harbor created under KRS 304.3-725;

17 (f) The number and types of orders or other actions taken by the commissioner or
18 any other interested party under KRS 304.3-700 to 304.3-725;

19 (g) Identification of any statutory barriers for consideration of amendment by the
20 General Assembly following successful beta tests and the issuance of
21 extended letters; and

22 (h) Any other information or recommendations deemed relevant by the
23 commissioner.

24 (3) The commissioner shall also provide the Interim Joint Committee on Banking and
25 Insurance a detailed briefing, upon request, to discuss and explain any report
26 submitted under this section.

27 ➔SECTION 3. A NEW SECTION OF SUBTITLE 33 OF KRS CHAPTER 304

1 IS CREATED TO READ AS FOLLOWS:

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

3 (1) As used in this section:

4 (a) 1. "Netting agreement":

5 a. Means an agreement, including a master agreement or bridge
6 agreement for one (1) or more master agreements, that:

7 i. Documents one (1) or more transactions between parties to
8 the agreement for or involving one (1) or more qualified
9 financial contracts; and

10 ii. Provides for the netting or liquidation of qualified financial
11 contracts among the parties to the agreement; and

12 b. Except as provided in subparagraph 2. of this paragraph,
13 includes any security agreement or arrangement or other credit
14 enhancement or guarantee or reimbursement obligation related
15 to any contract or agreement described in this paragraph.

16 2. Any contract or agreement described in this paragraph relating to
17 agreements or transactions that are not qualified financial contracts
18 shall be deemed a netting agreement only with respect to those
19 agreements or transactions that are qualified financial contracts.

20 3. A master agreement, or bridge agreement for one (1) or more master
21 agreements, together with all schedules, confirmations, definitions,
22 addenda thereto, and transactions under any thereof, shall be treated
23 as one (1) agreement.

24 4. As used in this paragraph:

25 a. "Agreement" includes any terms and conditions incorporated by
26 reference in the agreement; and

27 b. "Netting or liquidation of qualified financial contracts" includes

- 1 netting or liquidation of:
 2 i. Present or future payment obligations or payment
 3 entitlements under qualified financial contracts; and
 4 ii. Liquidation or closeout values relating to present or future
 5 payment obligations or payment entitlements under
 6 qualified financial contracts; and

7 **(b) "Qualified financial contract" means any:**

- 8 1. Commodity contract;
 9 2. Forward contract;
 10 3. Repurchase agreement;
 11 4. Securities contract;
 12 5. Swap agreement; or
 13 6. Similar agreement specified by the commissioner in an administrative
 14 regulation promulgated in accordance with KRS Chapter 13A;

15 **(2) A person shall not be stayed or prohibited from exercising any of the following**
 16 **rights:**

17 **(a) 1. A contractual right to terminate, liquidate, close out, or accelerate any**
 18 **netting agreement or qualified financial contract with an insurer due**
 19 **to:**

20 a. The insolvency, financial condition, or default of the insurer, if
 21 such right is enforceable under applicable law other than this
 22 subtitle; or

23 b. The commencement of a formal delinquency proceeding under
 24 this subtitle.

25 **2. As used in this paragraph, "contractual right" includes any right**
 26 **arising under:**

27 a. Statutory or common law;

- 1 b. Rules or bylaws of a national securities exchange, clearing
2 organization, or securities clearing agency;
- 3 c. Rules, bylaws, or resolutions of the governing body of a swap
4 execution facility, designated contract market, board of trade, or
5 any clearing organization relating to any of the foregoing; or
- 6 d. The law merchant;
- 7 (b) The right to enforce any pledge, security, collateral, guarantee agreement,
8 or other credit support document related to a netting agreement or qualified
9 financial contract; or
- 10 (c) Subject to subsection (3) of this section, the right to setoff or net any
11 termination value, payment amount, or other transfer obligation arising
12 under a netting agreement or qualified financial contract if the
13 counterparty or its guarantor is organized under the laws of the United
14 States, a state of the United States, or a foreign jurisdiction approved by the
15 Securities Valuation Office of the National Association of Insurance
16 Commissioners as eligible for netting;
- 17 (3) (a) Upon termination of a netting agreement or qualified financial contract:
- 18 1. The net or settlement amount owed by a nondefaulting party to an
19 insurer against which a delinquency proceeding has been initiated
20 shall be transferred to, or on the order of, the receiver, even if the
21 insurer is the defaulting party;
- 22 2. Any limited two-way payment provision in a netting agreement or
23 qualified financial contract with an insurer that has defaulted shall be
24 deemed a full two-way payment provision as against the defaulting
25 insurer; and
- 26 3. Any amount referenced in subparagraph 1. of this paragraph, except
27 to the extent it is subject to secondary liens or encumbrances, shall be

1 considered a general asset of the insurer.

2 (b) If a counterparty to a netting agreement or a qualified financial contract
3 with an insurer against which a delinquency proceeding has been initiated
4 terminates, liquidates, closes out, or accelerates the agreement or contract:

5 1. Damages shall be measured as of the date or dates of termination,
6 liquidation, close out, or acceleration; and

7 2. The amount of the claim for damages shall be actual direct
8 compensatory damages calculated in accordance with subsection (7)
9 of this section;

10 (4) A receiver shall not transfer a netting agreement or qualified financial contract
11 of an insurer unless the receiver transfers to one (1) counterparty, other than an
12 insurer subject to a delinquency proceeding, all:

13 (a) Netting agreements and qualified financial contracts between that
14 counterparty, or any affiliate of the counterparty, and the insurer; and

15 (b) Rights, obligations, guarantees, collateral, and credit support documents
16 related to the agreements and contracts referenced in paragraph (a) of this
17 subsection;

18 (5) (a) If a receiver transfers a netting agreement or qualified financial contract,
19 the receiver shall make best efforts to notify all counterparties to the
20 agreement or contract by noon, local time, of the next business day
21 following the transfer.

22 (b) As used in this subsection, "business day" means any day that is not a
23 Saturday, a Sunday, or a day on which the New York Stock Exchange or
24 the Federal Reserve Bank of New York is closed;

25 (6) (a) Except as provided in paragraph (b) of this subsection, a transfer of money
26 or other property made under a netting agreement or qualified financial
27 contract, including under any pledge, security, collateral, guarantee

1 arrangement, or other similar security arrangement or credit support
2 document relating to a netting agreement or qualified financial contract,
3 before the commencement of a delinquency proceeding shall not be:

4 1. Deemed fraudulent under this subtitle; or

5 2. Avoided by the receiver.

6 (b) A transfer may be deemed fraudulent and may be avoided by the receiver
7 under Section 8 of this Act if the transfer is made with actual intent to
8 hinder, delay, or defraud the insurer, the receiver, or any creditor;

9 (7) (a) If a receiver elects to disavow, reject, or repudiate a netting agreement or
10 qualified financial contract of an insurer under Section 6 of this Act or any
11 other section of this subtitle, the receiver shall disavow, reject, or repudiate
12 the entire netting agreement or qualified financial contract between the
13 insurer and a counterparty, or any affiliate of the counterparty, including
14 all related transactions in their entirety.

15 (b) If the receiver disavows, rejects, or repudiates a netting agreement or
16 qualified financial contract, a counterparty's claim against the estate of the
17 insurer shall be:

18 1. Determined as if the claim arose before the date of:

19 a. Except as provided in subdivision b. of this subparagraph, the
20 petition for liquidation; or

21 b. If a rehabilitation proceeding was converted to a liquidation, the
22 petition for rehabilitation; and

23 2. Limited to actual direct compensatory damages, determined as of the
24 date of disavowal, rejection, or repudiation.

25 (c) As used in paragraph (b) of this subsection, "actual direct compensatory
26 damages":

27 1. Includes normal and reasonable costs of cover or industry-standard

1 damages calculations that are applicable in the derivatives, securities,
 2 or other applicable market; and

3 2. Does not include punitive damages, lost profits, lost opportunities, or
 4 pain and suffering;

5 (8) This section shall not apply to netting agreements and qualified financial
 6 contracts between an insurer and any of its affiliates; and

7 (9) All rights of a counterparty under this section shall apply to netting agreements
 8 and qualified financial contracts entered into on behalf of:

9 (a) The general account of the insurer; and

10 (b) Any separate account of the insurer, if the assets of the separate account
 11 are available only to a counterparty to the netting agreements and qualified
 12 financial contracts entered into on behalf of that separate account.

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

14 (1) Except as provided in KRS 304.33-052 and Section 3 of this Act, any receiver
 15 appointed in a proceeding under this subtitle may at any time apply for and any
 16 court of general jurisdiction may grant such restraining orders, temporary and
 17 permanent injunctions, and other orders as are deemed necessary and proper to
 18 prevent:

19 (a) The transaction of further business by or on behalf of the insurer;

20 (b) The transfer of property against which the receiver has a claim;

21 (c) Interference with the receiver or with the proceedings;

22 (d) Waste of the insurer's assets;

23 (e) Dissipation and transfer of bank accounts;

24 (f) The institution or further prosecution of any actions or proceedings by or on
 25 behalf of the insurer;

26 (g) The institution or further prosecution of any action against the receiver or the
 27 insurer, including but not limited to interpleader or other actions involving

- 1 assets against which the receiver has a claim;
- 2 (h) The obtaining of preferences, judgments, attachments, garnishments, or liens
3 against the insurer or its assets;
- 4 (i) The levying of execution against the insurer or its assets;
- 5 (j) The making of any sale or deed for nonpayment of taxes or assessments that
6 would lessen the value of the assets of the insurer;
- 7 (k) The withholding from the receiver of books, accounts, documents, or other
8 records relating to the business of the insurer;
- 9 (l) Any other threatened or contemplated action that might lessen the value of the
10 insurer's assets or prejudice the rights of policyholders, creditors, or
11 shareholders, or the administration of the proceeding; or
- 12 (m) Any suit or other action against a reinsurer of the insurer.
- 13 (2) The receiver may apply to any court outside of this state for the relief described in
14 subsection (1) of this section.
- 15 ➔Section 5. KRS 304.33-170 is amended to read as follows:
- 16 (1) Stays in pending litigation. Except as provided in KRS 304.33-052 **and Section 3 of**
17 **this Act**, any court in this state before which any action or proceeding by or against
18 an insurer is pending when a rehabilitation order against the insurer is entered shall,
19 upon request of the rehabilitator, stay the action or proceeding for such time as is
20 necessary for the rehabilitator to obtain proper representation and prepare for
21 further proceedings. The court that entered the rehabilitation order shall order the
22 rehabilitator to take such action respecting the pending litigation as the court deems
23 necessary in the interests of justice and for the protection of creditors and
24 policyholders. The rehabilitator shall immediately consider all litigation pending
25 outside this state and shall petition the courts having jurisdiction over that litigation
26 for stays whenever necessary to protect the estate of the insurer.
- 27 (2) Statutes of limitations on claims by insurer. The time between the filing of a

1 petition for rehabilitation against an insurer and denial of the petition or an order of
2 rehabilitation shall not be considered to be a part of the time within which any
3 action may be commenced by the insurer. Any action by the insurer that might have
4 been commenced when the petition was filed may be commenced for at least sixty
5 (60) days after the order of rehabilitation is entered.

6 (3) Statutes of limitations on claims against insurer. The time between the filing of a
7 petition for rehabilitation against an insurer and the denial of the petition or an order
8 of rehabilitation shall not be considered to be a part of the time within which any
9 action may be commenced against the insurer. Any action against the insurer that
10 might have been commenced when the petition was filed may be commenced for at
11 least sixty (60) days after the order of rehabilitation is entered or the petition is
12 denied.

13 (4) A guaranty association or a foreign guaranty association shall have standing to
14 appear in any court proceeding concerning the rehabilitation of an insurer if such
15 association is or may become liable to act as a result of the rehabilitation.

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

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

20 (1) Appoint a special deputy to act for him or her under this subtitle, and, subject to the
21 court's approval, determine his or her compensation. The special deputy shall have
22 all powers of the liquidator granted by this section. The special deputy shall serve at
23 the pleasure of the liquidator;

24 (2) Appoint or engage employees and agents, legal counsel, actuaries, accountants,
25 appraisers, consultants, and other personnel he or she deems necessary to assist in
26 the liquidation;

27 (3) Fix the compensation of persons under subsection (2) of this section, subject to the

- 1 control of the court;
- 2 (4) Defray all expenses of taking possession of, conserving, conducting, liquidating,
3 disposing of, or otherwise dealing with the business and property of the insurer. If
4 the property of the insurer does not contain sufficient cash or liquid assets to defray
5 the costs incurred, the liquidator may advance the costs so incurred out of any
6 available appropriation. Any amounts so paid shall be deemed expense of
7 administration and shall be repaid for the credit of the Department of Insurance out
8 of the first available moneys of the insurer;
- 9 (5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths,
10 examine any person under oath, and compel any person to subscribe to his or her
11 testimony after it has been correctly reduced to writing, and in connection therewith
12 require the production of any books, papers, record, or other documents which he or
13 she deems relevant to the inquiry;
- 14 (6) Collect all debts and moneys due and claims belonging to the insurer, wherever
15 located, and for this purpose institute timely action in other jurisdictions to marshal
16 the assets of the insurer; forestall garnishment and attachment proceedings against
17 such debts; do such other acts as are necessary or expedient to collect, conserve or
18 protect its assets or property, including sell, compound, compromise, or assign for
19 purposes of collection, subject to court approval and upon such terms and
20 conditions as the liquidator deems best, any disputed claims; and pursue any
21 creditor's remedies available to enforce his or her claims. In lieu of collecting funds
22 representing unearned premium of a policyholder which are in the possession of the
23 insurer's agent with respect to the kinds of direct insurance protected under KRS
24 304.36-030, the liquidator may authorize the use of such funds to replace the
25 insurance coverage terminated pursuant to KRS 304.33-210, upon receipt from the
26 agent of appropriate notice of such replacement of the insurance coverage with an
27 insurer within sixty (60) days after the date of the liquidation order;

- 1 (7) Audit the books and records of all agents of the insurer insofar as these records
2 relate to the business activities of the insurer;
- 3 (8) Conduct public and private sales of the property of the insurer in a manner
4 prescribed by the court;
- 5 (9) Use assets of the estate to transfer policy obligations to a solvent assuming insurer,
6 if the transfer can be arranged without prejudice to applicable priorities under KRS
7 304.33-430;
- 8 (10) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or
9 otherwise dispose of or deal with any property of the insurer at its market value or
10 upon such terms and conditions as are fair and reasonable, except that no
11 transaction involving property the market value of which exceeds ten thousand
12 dollars (\$10,000) shall be concluded without express permission of the court. The
13 liquidator also may execute, acknowledge, and deliver any deeds, assignments,
14 releases, and other instruments necessary or proper to effectuate any sale of
15 property or other transaction in connection with the liquidation. In cases where real
16 property sold by the liquidator is located other than in the county where the
17 liquidation is pending, the liquidator shall cause to be filed with the county clerk for
18 the county in which the property is located a certified copy of the order appointing
19 him or her;
- 20 (11) Borrow money, subject to court approval, on the security of the insurer's assets or
21 without security and execute and deliver all documents necessary to that transaction
22 for the purpose of facilitating the liquidation;
- 23 (12) Enter into such contracts as are necessary to carry out the order to liquidate, and
24 affirm or disavow any contracts to which the insurer is a party, except the liquidator
25 shall not disavow, reject, or repudiate a federal home loan bank security agreement
26 or any pledge agreement, security agreement, collateral agreement, guarantee
27 agreement, or other similar arrangement or credit enhancement relating to a security

- 1 agreement to which a federal home loan bank is a party;
- 2 (13) Continue to prosecute and institute in the name of the insurer or in his or her own
3 name any suits and other legal proceedings, in this state or elsewhere, and abandon
4 the prosecution of claims he or she deems unprofitable to pursue further. If the
5 insurer is dissolved under KRS 304.33-220, he or she may apply to any court in this
6 state or elsewhere for leave to substitute himself or herself for the insurer as
7 plaintiff;
- 8 (14) Prosecute any action which may exist ~~on~~ⁱⁿ behalf of the creditors, members,
9 policyholders, or shareholders of the insurer against any officer of the insurer, or
10 any other person;
- 11 (15) Remove any records and property of the insurer to the offices of the commissioner
12 or to such other place as is convenient for the purposes of efficient and orderly
13 execution of the liquidation;
- 14 (16) Deposit in one (1) or more banks in this state such sums as are required for meeting
15 current administration expenses and dividend distributions;
- 16 (17) File any necessary documents for record in the office of any county clerk or record
17 office in this state or elsewhere where property of the insurer is located;
- 18 (18) Assert all defenses available to the insurer as against third persons, including
19 statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any
20 defense by the insurer after a petition for liquidation has been filed shall not bind
21 the liquidator;
- 22 (19) Exercise and enforce all the rights, remedies and powers of any creditor,
23 shareholder, policyholder, or member, including any power to avoid any transfer or
24 lien that may be given by law and that is not included within KRS 304.33-290 to
25 304.33-310, inclusive;
- 26 (20) Intervene in any proceeding wherever instituted that might lead to the appointment
27 of a receiver or trustee, and act as the receiver or trustee whenever the appointment

1 is offered;

2 (21) Enter into agreements with any receiver or commissioner of any other state relating
3 to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing
4 business in both states;

5 (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of
6 this state not inconsistent with this subtitle; and

7 (23) The enumeration in this section of the powers and authority of the liquidator is not a
8 limitation upon him or her, nor does it exclude his or her right to do such other acts
9 not herein specifically enumerated or otherwise provided for as are necessary or
10 expedient for the accomplishment of or in aid of the purpose of liquidation.

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

12 (1) Written notice. Every person who receives notice in the form prescribed in KRS
13 304.33-250 that an insurer for which he or she has acted as agent is the subject of a
14 liquidation order shall as soon as practicable give notice of the liquidation order.
15 The notice shall be sent by first-class mail to the last address contained in the
16 agent's records to each policyholder or other person named in any policy issued
17 through the agent by the company, if he or she has a record of the address of the
18 policyholder or other person. A policy shall be deemed issued through an agent if
19 the agent has a property interest in the expiration of the policy; or if the agent has
20 had in his or her possession a copy of the declarations of the policy at any time
21 during the life of the policy, except where the ownership of the expiration of the
22 policy has been transferred to another. The written notice shall include the name
23 and address of the insurer, the name and address of the agent, identification of the
24 policy impaired, and the nature of the impairment under KRS 304.33-210. Notice
25 by a general agent shall satisfy the notice requirement for any agents under contract
26 to him or her.

27 (2) Oral notice. So far as practicable, every insurance agent subject to subsection (1) of

1 this section shall give immediate oral notice, by telephone or otherwise, of the
 2 liquidation order to the same persons to whom he or she is obligated to give written
 3 notice. The oral notice shall include substantially the same information as the
 4 written notice.

5 (3) The liquidator may waive the duties imposed by this section if he or she determines
 6 that other notice to the policyholders of the insurer under liquidation is adequate.

7 (4) Transfer of assets. Every agent subject to subsection (1) of this section shall,
 8 immediately upon receiving notice pursuant to KRS 304.33-250, and not later than
 9 thirty (30) days thereafter, except as otherwise ~~expressly~~ provided under Section 3
 10 of this Act or KRS 304.33-240(6), transfer all assets of the insurer in possession of
 11 the agent as of the date of liquidation or any time thereafter to the liquidator. If
 12 there is any dispute as to whether assets which an agent is holding are assets of the
 13 insurer, the agent shall petition the court for an order determining the ownership
 14 thereof.

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

16 (1) Definition and effect. Except as provided in subsection (5) of this section and
 17 Section 3 of this Act:~~;~~

18 (a) Every transfer made or suffered and every obligation incurred by an insurer
 19 within one (1) year prior to the filing of a successful petition for rehabilitation
 20 or liquidation under this subtitle shall be fraudulent as to then existing and
 21 future creditors if made or incurred without fair consideration, or with actual
 22 intent to hinder, delay or defraud either existing or future creditors;~~;~~

23 (b) A transfer made or an obligation incurred by an insurer ordered to be
 24 rehabilitated or liquidated under this subtitle, which is fraudulent under this
 25 section, may be avoided by the receiver, except as to a person who in good
 26 faith is a purchaser, lienor, or obligee for a present fair equivalent value; and
 27 except that any purchaser, lienor, or obligee, who in good faith has given a

1 consideration less than fair for such transfer, lien, or obligation, may retain the
2 property, lien, or obligation as security for repayment; ~~and~~.

3 (c) The court may, on due notice, order any such transfer or obligation to be
4 preserved for the benefit of the estate, and in that event the receiver shall
5 succeed to and may enforce the rights of the purchaser, lienor, or obligee.

6 (2) Perfection of transfers.

7 (a) Personal property. A transfer of property other than real property shall be
8 deemed to be made or suffered when it becomes so far perfected that no
9 subsequent lien obtainable by legal or equitable proceedings on a simple
10 contract could become superior to the rights of the transferee under subsection
11 (3) of KRS 304.33-310.

12 (b) Real property. A transfer of real property shall be deemed to be made or
13 suffered when it becomes so far perfected that no subsequent bona fide
14 purchaser from the insurer could obtain rights superior to the rights of the
15 transferee.

16 (c) Equitable liens. A transfer which creates an equitable lien shall not be deemed
17 to be perfected if there are available means by which a legal lien could be
18 created.

19 (d) Transfer not perfected prior to petition. Any transfer not perfected prior to the
20 filing of a petition for liquidation shall be deemed to be made immediately
21 before the filing of the successful petition.

22 (e) Actual creditors unnecessary. This subsection shall apply whether or not there
23 are or were creditors who might have obtained any liens or persons who might
24 have become bona fide purchasers.

25 (3) Fraudulent reinsurance transactions. Any transaction of the insurer with a reinsurer
26 shall be deemed fraudulent and may be avoided by the receiver under subsection (1)
27 of this section if:

- 1 (a) The transaction consists of the termination, adjustment or settlement of a
2 reinsurance contract in which the reinsurer is released from any part of its
3 duty to pay the originally specified share of losses that had occurred prior to
4 the time of the transaction, unless the reinsurer gives a present fair equivalent
5 value for the release; and
- 6 (b) Any part of the transaction took place within one (1) year prior to the date of
7 filing of the petition through which the receivership was commenced.
- 8 (4) Every person receiving any property from the insurer or any benefit thereof which
9 is a fraudulent transfer under this section shall be personally liable therefor and
10 shall be bound to account to the liquidator.
- 11 (5) (a) Except as provided in paragraph (b) of this subsection, any transfer of, and
12 any obligation to transfer, money or other property from an insurer-member to
13 the federal home loan bank under a federal home loan bank security, pledge,
14 collateral, or guarantee agreement, or other similar arrangement or credit
15 enhancement, shall not be deemed fraudulent and shall not be avoided by the
16 receiver under subsection (1) of this section if the agreement, arrangement, or
17 enhancement is:
- 18 1. Made in the ordinary course of business; and
19 2. Made in compliance with the applicable federal home loan bank
20 agreement.
- 21 (b) A transfer may be deemed fraudulent and may be avoided by the receiver
22 under subsection (1) of this section if the transfer is made with the intent to
23 hinder, delay, or defraud:
- 24 1. An insurer-member;
25 2. The receiver of the insurer-member; or
26 3. Existing or future creditors of the insurer-member.

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

1 *Except as provided in Section 3 of this Act:*

- 2 (1) Effect of petition: real property. After a petition for rehabilitation or liquidation, a
3 transfer of any of the real property of the insurer made to a person acting in good
4 faith shall be valid against the receiver if made for a present fair equivalent value
5 or, if not made for a present fair equivalent value, then to the extent of the present
6 consideration actually paid therefor, for which amount the transferee shall have a
7 lien on the property so transferred. The recording of a copy of the petition for or
8 order of rehabilitation or liquidation with the county clerk in the county where any
9 real property in question is located shall be constructive notice of the
10 commencement of a proceeding in rehabilitation or liquidation. The exercise by a
11 court of the United States or any state of jurisdiction to authorize or effect a judicial
12 sale of real property of the insurer within any county in any state shall not be
13 impaired by the pendency of such a proceeding unless the copy is recorded in the
14 county prior to the consummation of the judicial sale.~~[-]~~
- 15 (2) Effect of petition: personal property. After a petition for rehabilitation or liquidation
16 and before either the receiver takes possession of the property of the insurer or an
17 order of rehabilitation or liquidation is granted:
- 18 (a) A transfer of any of the property of the insurer, other than real property, made
19 to a person acting in good faith shall be valid against the receiver if made for a
20 present fair equivalent value or, if not made for a present fair equivalent
21 value, then to the extent of the present consideration actually paid therefor, for
22 which amount the transferee shall have a lien on the property so transferred;
- 23 (b) A person indebted to the insurer or holding property of the insurer may, if
24 acting in good faith, pay the indebtedness or deliver the property or any part
25 thereof to the insurer or upon his or her order, with the same effect as if the
26 petition were not pending;
- 27 (c) A person having actual knowledge of the pending rehabilitation or liquidation

1 shall be deemed not to act in good faith unless he or she has reasonable cause
2 to believe that the petition is not well founded; and

3 (d) A person asserting the validity of a transfer under this section shall have the
4 burden of proof. Except as elsewhere provided in this section, no transfer by
5 or in behalf of the insurer after the date of the petition for liquidation by any
6 person other than the liquidator shall be valid against the liquidator;~~[-]~~

7 (3) Every person receiving any property from the insurer or any benefit thereof which
8 is a fraudulent transfer under this section shall be personally liable therefor and
9 shall be bound to account to the liquidator; **and**~~[-]~~

10 (4) Negotiability. Nothing in this subtitle shall impair the negotiability of currency or
11 negotiable instruments.

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

13 **Except as provided in Section 3 of this Act:**

14 (1) Preferences.

15 (a) Preference defined. A preference is a transfer of any of the property of an
16 insurer to or for the benefit of a creditor, for or on account of an antecedent
17 debt made or suffered by the insurer within one (1) year before the filing of a
18 successful petition for liquidation under this subtitle, the effect of which
19 transfer may be to enable the creditor to obtain a greater percentage of his **or**
20 **her** debt than another creditor of the same class would receive. If a liquidation
21 order is entered while the insurer is already subject to a rehabilitation order,
22 transfers otherwise qualifying shall be deemed preferences if made or suffered
23 within one (1) year before the filing of the successful petition for
24 rehabilitation or within two (2) years before the filing of the successful
25 petition for liquidation, whichever time is shorter.

26 (b) Invalidation of preferences. Except as provided in subsection (10) of this
27 section, any preference may be avoided by the liquidator, if:

- 1 1. The insurer was insolvent at the time of the transfer;
- 2 2. The transfer was made within four (4) months before the filing of the
- 3 petition;
- 4 3. The creditor receiving it or to be benefited thereby or his or her agent
- 5 acting with reference thereto had reasonable cause to believe at the time
- 6 when the transfer was made that the insurer was insolvent or was about
- 7 to become insolvent; or
- 8 4. The creditor receiving it was an officer, employee, attorney or other
- 9 person who was in fact in a position of comparable influence in the
- 10 insurer to an officer whether or not he or she held such position, or any
- 11 shareholder holding directly or indirectly more than five percent (5%) of
- 12 any class of any equity security issued by the insurer, or any other
- 13 person with whom the insurer did not deal at arm's length.

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

24 (2) Perfection of transfers.

- 25 (a) Personal property. A transfer of property other than real property is deemed to
- 26 be made or suffered when it becomes so far perfected that no subsequent lien
- 27 obtainable by legal or equitable proceedings on a simple contract could

1 become superior to the rights of the transferee.

2 (b) Real property. A transfer of real property is deemed to be made or suffered
3 when it becomes so far perfected that no subsequent bona fide purchaser from
4 the insurer could obtain rights superior to the rights of transferee.

5 (c) Equitable liens. A transfer which creates an equitable lien is not deemed to be
6 perfected if there are available means by which a legal lien could be created.

7 (d) Transfers not perfected prior to petition. A transfer not perfected prior to the
8 filing of a petition for liquidation shall be deemed to be made immediately
9 before the filing of the successful petition.

10 (e) Actual creditors unnecessary. This subsection applies whether or not there
11 were creditors who might have obtained liens or persons who might have
12 become bona fide purchasers; ~~and~~

13 (3) Liens by legal or equitable proceedings.

14 (a) Definition. A lien obtainable by legal or equitable proceedings upon a simple
15 contract is one arising in the ordinary course of such proceedings upon the
16 entry or docketing of a judgment or decree, or upon attachment, garnishment,
17 execution or like process, whether before, upon or after judgment or decree
18 and whether before or upon levy. It does not include liens which under
19 applicable law are given a special priority over other liens which are prior in
20 time.

21 (b) When liens are superior. A lien obtainable by legal or equitable proceedings
22 could become superior to the rights of a transferee, or a purchaser could
23 obtain rights superior to the rights of a transferee within the meaning of
24 subsection (2) of this section, if such consequences would follow only from
25 the lien or purchase itself, or from the lien or purchase followed by any step
26 wholly within the control of the respective lienholder or purchaser, with or
27 without the aid of ministerial action by public officials. Such a lien could not,

1 however, become superior and such a purchase could not create superior
2 rights for the purpose of subsection (2) of this section through any acts
3 subsequent to the obtaining of such a lien or subsequent to such a purchase
4 which require the agreement or concurrence of any third party or which
5 require any further judicial action, or ruling;[]

6 (4) Twenty-one day rule. A transfer of property for or on account of a new and
7 contemporaneous consideration which is deemed under subsection (2) of this
8 section to be made or suffered after the transfer because of delay in perfecting it
9 does not thereby become a transfer for or on account of an antecedent debt if any
10 acts required by the applicable law to be performed in order to perfect the transfer
11 as against liens or bona fide purchasers' rights are performed within twenty-one
12 (21) days or any period expressly allowed by the law, whichever is less. A transfer
13 to secure a future loan, if such a loan is actually made, or a transfer which becomes
14 security for a future loan shall have the same effect as a transfer for or on account
15 of a new and contemporaneous consideration;[]

16 (5) Indemnifying transfers also voidable. If any lien deemed voidable under paragraph
17 (b) of subsection (1) of this section has been dissolved by the furnishing of a bond
18 or other obligation, the surety on which has been indemnified directly or indirectly
19 by the transfer of or the creation of a lien upon any property of an insurer before the
20 filing of a petition under this subtitle which results in a liquidation order, the
21 indemnifying transfer or lien shall also be deemed voidable;[]

22 (6) Avoidance of lien. The property affected by any lien deemed voidable under
23 paragraph (b) of subsection (1) of this section and subsection (5) of this section is
24 discharged from the lien, and that property and any of the indemnifying property
25 transferred to or for the benefit of a surety shall pass to the liquidator, except that
26 the court may on due notice order the lien to be preserved for the benefit of the
27 estate and the court may direct that a conveyance be executed which is adequate to

- 1 evidence the title of the liquidator;~~[-]~~
- 2 (7) Hearings to determine rights. The court shall have summary jurisdiction of any
3 proceeding by the liquidator to hear and determine the rights of any parties under
4 this section. Reasonable notice of any hearing in the proceeding shall be given to all
5 parties in interest, including the obligee of a releasing bond or other like obligation.
6 Where an order is entered for the recovery of indemnifying property in kind or for
7 the avoidance of an indemnifying lien, the court, upon application of any party in
8 interest, shall in the same proceeding ascertain the value of the property or lien, and
9 if the value is less than the amount for which the property is indemnity or than the
10 amount of the lien, the transferee or lienholder may elect to retain the property or
11 lien upon payment of its value, as ascertained by the court, to the liquidator within
12 such reasonable times as the court fixes;~~[-]~~
- 13 (8) Surety's liability discharged. The liability of a surety under a releasing bond or
14 other like obligation shall be discharged to the extent of the value of the
15 indemnifying property recovered or the indemnifying lien nullified and avoided or,
16 where the property is retained under subsection (7) of this section to the extent of
17 the amount paid to the liquidator;~~[-]~~
- 18 (9) Setoff of new advances. If a creditor has been preferred and afterward in good faith
19 gives the insurer further credit without security of any kind, for property which
20 becomes a part of the insurer's estate, the amount of the new credit remaining
21 unpaid at the time of the petition may be set off against the preference which would
22 otherwise be recoverable from him or her; and~~[-]~~
- 23 (10) Federal home loan bank preferences. A liquidator shall not avoid any preference
24 arising under, or in connection with, a federal home loan bank security agreement
25 or any pledge agreement, security agreement, collateral agreement, guarantee
26 agreement, or other similar arrangement or credit enhancement relating to a security
27 agreement to which a federal home loan bank is a party.

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

- 2 (1) Set-offs allowed in general. Mutual debt or mutual credits between the insurer and
3 another person in connection with any action or proceeding under this subtitle shall
4 be set off and the balance only shall be allowed or paid, except as provided in
5 subsection (2) of this section.
- 6 (2) Exceptions. *Except as provided in Section 3 of this Act,* no set-off or counterclaim
7 shall be allowed in favor of any person where:
- 8 (a) The obligation of the insurer to the person would not at the date of the filing
9 of a petition for liquidation entitle him *or her* to share as a claimant in the
10 assets of the insurer;
- 11 (b) The obligation of the insurer to the person was purchased by or transferred to
12 the person with a view to its being used as a set-off;
- 13 (c) The obligation of the person is to pay an assessment levied against the
14 members or subscribers of the insurer, or is to pay a balance upon a
15 subscription to the capital stock of the insurer, or is in any other way in the
16 nature of a capital contribution; or
- 17 (d) The obligation of the person is to pay earned premiums to the insurer.
18 However, the provisions of this paragraph shall only apply to reinsurance
19 contracts entered into prior to July 13, 2004.