

## HOUSE BILL No. 2787

By Committee on Insurance

Requested by Eric Turek on behalf of the Kansas Insurance Department

2-9

1 AN ACT concerning property and casualty insurance; relating to the  
2 Kansas insurance guaranty association act; updating certain definitions,  
3 terms and conditions thereto; establishing continuity of guaranty fund  
4 coverage when a policy is transferred from one insurer to another and  
5 of guaranty fund coverage related to cybersecurity insurance;  
6 authorizing the commissioner of insurance to reduce the number of  
7 members of the association's board of directors; amending K.S.A. 40-  
8 2903, 40-2905, 40-2906 and 40-2910 and repealing the existing  
9 sections.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 40-2903 is hereby amended to read as follows: 40-  
13 2903. As used in this act: (a) "Association" means the Kansas insurance  
14 guaranty association created by this act.

15 (b) "Commissioner" means the commissioner of insurance of ~~this~~  
16 ~~state~~ Kansas.

17 (c) "Covered claim" ~~means~~ includes the following:

18 (1) An unpaid claim, including one for unearned premiums, ~~which~~  
19 ~~that~~ arises out of and is within the coverage and not in excess of the  
20 applicable limits of an insurance policy to which this act applies issued by  
21 an insurer, if such insurer becomes an insolvent insurer after the effective  
22 date of this act and:

23 (1)(A) The claimant or insured is a resident of this state at the time of  
24 the insured event. For entities other than an individual, the residence of a  
25 claimant, insured or policyholder is the state in which the principal place  
26 of business of such claimant, insured or policyholder is located at the time  
27 of the insured events; or

28 (2)(B) the claim is a first party claim for damage to property that is  
29 permanently located in this state.

30 (2) "Covered claim" includes claim obligations that arose through  
31 the issuance of an insurance policy by a member insurer, which are later  
32 allocated, transferred, merged into, novated, assumed by or otherwise  
33 made the sole responsibility of a member or nonmember insurer if:

34 (A) The original member insurer has no remaining obligation on the  
35 policy after the transfer;

1 (B) a final order of liquidation with a finding of insolvency has been  
 2 entered against the insurer that assumed the member's coverage  
 3 obligations by a court of competent jurisdiction in the insurer's state of  
 4 domicile;

5 (C) the claim would have been a covered claim, as defined in  
 6 subsection (c)(1), if the claim had remained the responsibility of the  
 7 original member insurer and the order of liquidation had been entered  
 8 against the original member insurer with the same claim submission date  
 9 and liquidation date; and

10 (D) in cases where the member's coverage obligations were assumed  
 11 by a nonmember insurer, the transaction received prior regulatory or  
 12 judicial approval.

13 (3) "Covered claim" ~~shall~~ does not include:

14 ~~(A)~~ Any amount due any reinsurer, insurer, insurance pool or  
 15 underwriting association; as subrogation recoveries or otherwise;

16 ~~(B)~~ any amount awarded as punitive or exemplary damages unless  
 17 such damages were covered under the policy of the insolvent insurer; or

18 ~~(C)~~ any claim by an affiliate of the insolvent insurer.

19 (d) "Domiciliary state" means:

20 (1) The state in which an insurer is incorporated or organized; or

21 (2) in the case of an alien insurer, the state of entry of such insurer.

22 (e) "Insolvent insurer" means:

23 (1) An insurer licensed by the commissioner to transact insurance in  
 24 this state either at the time the policy was issued or when the insured event  
 25 occurred; and

26 (2) determined to be insolvent by a court of competent jurisdiction  
 27 and against whom a final order of liquidation has been entered by a court  
 28 of competent jurisdiction in the insurer's domiciliary state.

29 (f) "Member insurer" means any person who ~~(1)~~ is:

30 (1) Authorized to write any kind of insurance to which this act applies  
 31 under K.S.A. 40-2902, and amendments thereto, including the exchange of  
 32 reciprocal or inter-insurance contracts; and

33 (2) ~~is~~ licensed by the commissioner to transact insurance in this state.

34 This act shall not apply to those persons transacting business pursuant to  
 35 the provisions of K.S.A. 40-202, and amendments thereto.

36 (g) "Net direct written premiums" means first gross premiums written  
 37 in this state on insurance policies to which this act applies, less return  
 38 premiums thereon and dividends paid or credited to policyholders on such  
 39 direct business. "Net direct written premiums" does not include premiums  
 40 on contracts between insurers or reinsurers.

41 (h) "Person" means any individual, corporation, partnership,  
 42 association or voluntary organization.

43 (i) ~~The provisions of this section, as amended on July 1, 2006, shall~~

1 ~~apply to all claims which have not been paid prior to April 14,~~  
2 ~~2005~~ "Cybersecurity insurance," for purposes of this act, includes first and  
3 third-party coverage, in a policy or endorsement, written on a direct,  
4 admitted basis for losses and loss mitigation arising out of or relating to  
5 data privacy breaches, unauthorized information network security  
6 intrusions, computer viruses, ransomware, cyber extortion, identity theft  
7 and similar exposures.

8 Sec. 2. K.S.A. 40-2905 is hereby amended to read as follows: 40-  
9 2905. (a) (1) The board of directors of the association shall consist of nine  
10 (9) persons, of which three (3) members shall serve terms of one (1) year;  
11 (2) three (3) members shall serve terms of two (2) years; and; (3) three (3)  
12 members shall serve terms of three (3) years. The members of the board  
13 shall be selected by member insurers subject to the approval of the  
14 commissioner. ~~The successor of each member serving on the board on July~~  
15 ~~1, 1976, shall be selected to serve for a term of three (3) years.~~ Vacancies  
16 on the board shall be filled for the remaining period of the term in the  
17 same manner as *the* initial appointments. ~~If no members are selected~~  
18 ~~within sixty (60) days after the effective date of this act, the commissioner~~  
19 ~~may appoint the initial members of the board of directors~~ *The members of*  
20 *the board of directors serving as of July 1, 2024, shall continue their terms*  
21 *until the expiration of such members' current terms. Upon expiration of*  
22 *each member's term, the commissioner shall decide whether to continue*  
23 *such member's position on the board or reduce the number of members of*  
24 *the board of directors in accordance with paragraph (d).*

25 (b) In approving or continuing selections to the board, the  
26 commissioner shall consider among other ~~things~~ *criteria*, whether all  
27 member insurers are fairly represented.

28 (c) Members of the board may be reimbursed from the assets of the  
29 association for expenses incurred ~~by them~~ *thereby* as members of the  
30 board of directors.

31 (d) *On and after January 1, 2025, the board of directors shall consist*  
32 *of not fewer than seven members but not more than nine members*  
33 *appointed in accordance with this paragraph. Members of the board shall*  
34 *be selected by member insurers, subject to the approval of the*  
35 *commissioner. Each member of the board of directors shall serve a term of*  
36 *three years but shall be removable by the commissioner for inefficiency,*  
37 *neglect of duty or malfeasance.*

38 Sec. 3. K.S.A. 40-2906 is hereby amended to read as follows: 40-  
39 2906. (a) In the event of the determination of insolvency and order of  
40 liquidation of a licensed insurer after the effective date of this act, the  
41 association shall:

42 (1) Be obligated to the extent of the covered claims existing prior to  
43 the determination of insolvency and arising within 30 days after the

1 determination of insolvency, ~~or~~ before the policy expiration date if less  
2 than 30 days after the determination; or before the insured replaces the  
3 policy or causes ~~its~~ *such policy's* cancellation; if such insured does so  
4 within 30 days of the determination, ~~but except that~~ such obligation shall  
5 include only that amount of each covered claim ~~which~~ *that* does not  
6 exceed the first \$300,000 of any claim, except that the association shall  
7 pay the full amount of any covered claim arising out of a workmen's  
8 compensation policy. In no event shall the association be obligated to the  
9 policyholder or claimant in an amount in excess of the face amount of the  
10 policy from which the claim arises. *Additionally, in no event shall the*  
11 *association be obligated to pay an amount in excess of \$300,000 for all*  
12 *first and third-party claims under a policy or endorsement providing, or*  
13 *that is found to provide, cybersecurity insurance coverage and arising out*  
14 *of, or related to, a single insured event, regardless of the number of claims*  
15 *made or the number of claimants;*

16 (2) be deemed the insurer to the extent of its obligation on the  
17 covered claims and to such extent shall have all rights, duties and  
18 obligations of the insolvent insurer as if the insurer had not become  
19 insolvent;-

20 (3) assess insurers amounts necessary to pay the obligations of the  
21 association under subsection (1) subsequent to an insolvency, the expenses  
22 of handling covered claims subsequent to an insolvency, ~~and~~ the cost of  
23 examinations under K.S.A. 40-2911, and amendments thereto, and other  
24 expenses authorized by this act. The assessments of each member insurer  
25 shall be in the proportion that the net direct written premiums of the  
26 member insurer for the preceding calendar year bears to the net direct  
27 written premiums of all member insurers for the preceding calendar year.  
28 Each member insurer shall be notified of the assessment not later than 30  
29 days before it is due. No member insurer may be assessed in any year an  
30 amount greater than 2% of that member insurer's net direct written  
31 premiums for the preceding calendar year. If the maximum assessment,  
32 together with the other assets of the association, does not provide in any  
33 one year an amount sufficient to make all necessary payments, the funds  
34 available shall be prorated, and the unpaid portion shall be paid as soon  
35 thereafter as funds become available. The association may exempt or  
36 defer, in whole or in part, the assessment of any member insurer; if the  
37 assessment would cause the member insurer's financial statement to reflect  
38 amounts of capital or surplus less than the minimum amounts required for  
39 a certificate of authority by any jurisdiction in which the member insurer is  
40 authorized to transact insurance, or ~~if~~ the commissioner advises the  
41 association that such assessment would in such commissioner's opinion; be  
42 detrimental to the solvency of a member insurer. Each member insurer  
43 may set off against any assessment, authorized payments made on covered

1 claims and expenses incurred in the payment of such claims by the  
2 member insurer;:-

3 (4) investigate claims brought against the association and adjust,  
4 compromise, settle and pay covered claims to the extent of the  
5 association's obligation and deny all other claims and may review  
6 settlements, releases and judgments to which the insolvent insurer or its  
7 insureds were parties to determine the extent to which such settlements,  
8 releases and judgments may be properly contested;:-

9 (5) notify such persons as the commissioner directs under K.S.A. 40-  
10 2908 (b)(1), and amendments thereto;:-

11 (6) handle claims through its employees or through one or more  
12 insurers or other persons designated as servicing facilities. Designation of  
13 a servicing facility is subject to the approval of the commissioner, ~~but~~  
14 *except that* such designation may be declined by a member insurer;:- *and*

15 (7) reimburse each servicing facility for obligations of the association  
16 paid by the facility and for expenses incurred by the facility while  
17 handling claims on behalf of the association and ~~shall~~ pay the other  
18 expenses of the association authorized by this act.

19 (b) The association may:

20 (1) Employ or retain such persons as are necessary to handle claims,  
21 *provide covered policy benefits and service* and perform other duties of the  
22 association;:-

23 (2) borrow funds necessary to effect the purposes of this act in  
24 accordance with the plan of operation;:-

25 (3) sue or be sued;:-

26 (4) negotiate and become a party to such contracts as are necessary to  
27 carry out the purposes of this act;:-

28 (5) perform such other acts as are necessary or proper to effectuate  
29 the purposes of this act;:- *or*

30 (6) refund to the member insurers, in proportion to the contribution of  
31 each member insurer to the association, that amount by which the assets of  
32 the association exceed the liabilities, if, at the end of any calendar year, the  
33 board of directors finds that the assets of the association exceed the  
34 liabilities of the association as estimated by the board of directors for the  
35 coming year.

36 (c) The association shall issue to each insurer paying an assessment  
37 under this act a certificate of contribution, in a form prescribed by the  
38 commissioner, for the amount so paid. All outstanding certificates shall be  
39 of equal dignity and priority without reference to amounts or dates of  
40 issue. A certificate of contribution may be shown by the insurer in its  
41 financial statement as an asset in such form and for such amount, if any,  
42 and period of time as the commissioner may approve.

43 (d) Notwithstanding any other provisions of this act:

1 (1) A covered claim shall not include a claim filed with the  
 2 association after the earlier of:

- 3 (A) ~~Eighteen~~ 18 months after the date of the order of liquidation; or
- 4 (B) the final date set by the court for the filing of claims against the  
 5 liquidator or receiver of an insolvent insurer.

6 (2) A covered claim shall not include any claim filed with the  
 7 association or a liquidator for protection afforded under the insured's  
 8 policy for incurred-but-not-reported losses.

9 (3) Any obligation of the association to defend an insured on a  
 10 covered claim shall cease upon the association's:

11 (A) Payment, by settlement or on a judgment, of an amount equal to  
 12 the lesser of the association's covered claim obligation limit or the  
 13 applicable policy limit; or

14 (B) tender of such amount.

15 Sec. 4. K.S.A. 40-2910 is hereby amended to read as follows: 40-  
 16 2910. (a) Any person having a claim against an insurer under any  
 17 provision in an insurance policy other than a policy of an insolvent insurer  
 18 ~~which that~~ is also a covered claim shall be required to exhaust first ~~his~~  
 19 *such person's* right under such policy. A claim under an insurance policy  
 20 shall include a claim under any kind of insurance, whether such claim is a  
 21 first party or third party claim, and shall include, without limitation,  
 22 accident and health insurance, workers' compensation, Blue Cross and  
 23 Blue Shield and all other coverages except for policies of an insolvent  
 24 insurer *or any right under a life insurance policy*. Any amount payable on  
 25 a covered claim under this act shall be reduced by the *full applicable limits*  
 26 *stated in the other insurance policy or by* the amount of any recovery  
 27 under such other insurance policy. *The credit shall be reduced by the*  
 28 *lesser of the:*

- 29 (1) *Association's covered claim limit;*
- 30 (2) *amount of the judgment on the settlement of the claim; or*
- 31 (3) *policy limits of the insolvent insurer's policy.*

32 (b) Any person having a claim ~~which that~~ may be recovered under  
 33 more than one insurance guaranty association or its equivalent shall seek  
 34 recovery first from the association of the place of residence of the insured  
 35 except ~~that~~ if it is a first party claim for damage to property with a  
 36 permanent location; from the association of the location of the property;  
 37 and if it is a workmen's compensation claim; from the association of the  
 38 residence of the claimant. Any recovery under this act shall be reduced by  
 39 the amount of the recovery from any other insurance guaranty association  
 40 or its equivalent.

41 (c) The provisions of this section, ~~as amended,~~ shall apply to all  
 42 claims ~~which that~~ have not been paid prior to the effective date of this act.

43 Sec. 5. K.S.A. 40-2903, 40-2905, 40-2906 and 40-2910 are hereby

1 repealed.

2       Sec. 6. This act shall take effect and be in force from and after its  
3 publication in the statute book.