As Amended by Senate Committee

Session of 2013

HOUSE BILL No. 2339

By Committee on Insurance

2-14

AN ACT concerning insurance; relating to adverse underwriting decisions; allowing return of premiums separate from notice; amending K.S.A. 40-2,112 and repealing the existing section; life insurance; providing for certain additional riders on life insurance policies; amending K.S.A. 2012 Supp. 40-401 and repealing the existing section.

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

Section 1. K.S.A. 40-2,112 is hereby amended to read as follows: 40-2,112. (a) In the event of an adverse underwriting decision the insurance company, health maintenance organization or agent responsible for the decision shall either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such persons that upon written request they may receive the specific reason or reasons in writing.

(b) Upon receipt of a written request within 60 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance company, health maintenance organization or agent shall furnish to such person within 21 business days of the receipt of such written request:

(1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (a); or

(2) if specific items of medical record information are supplied by a health care institution or health care provider it shall be disclosed either directly to the individual about whom the information relates or to a health care provider designated by the individual and licensed to provide health care with respect to the condition to which the information relates, whichever the insurance company, health maintenance organization or agent prefers; and

(3) the names and addresses of the institutional sources that supplied the specific items of information given pursuant to subsection (b)(2) if the identity of any health care provider or health care institution is disclosed either directly to the individual or to the designated health care provider, whichever the insurance company, health maintenance organization or agent prefers.
(e) The obligations imposed by this section upon an insurance company, health maintenance organization or agent may be satisfied by another insurance company, health maintenance organization or agent authorized to act on its behalf.

(d) The company, health maintenance organization or the agent, whichever is in possession of the money, shall refund to the applicant, policyholder or individual proposed for coverage, the difference between the payment and the earned premium, if any, in the event of a declination of insurance coverage, termination of insurance coverage, or any other adverse underwriting decision.

(1) If coverage is in effect, such refund shall accompany the notice of the adverse underwriting decision, except such refund obligation shall not apply if:

(A) Material underwriting information requested by the application for coverage is clearly misstated or omitted and the company or health maintenance organization attempts to provide coverage based on the proper underwriting information; or

(B) such refund may separately be returned in not more than 10 days from the date of such notice. The notice shall contain language indicating that any refund due will be returned in not more than 10 days from the date on such notice. The refund requirement shall not apply to life insurance if the company or health maintenance organization includes with the notice of the adverse underwriting decision an offer of coverage to an applicant for life insurance under a different policy or at an increased premium. If such a counter-offer is made by the insurer, the insured or the insured's legal representative shall have 10 business days after receipt thereof in which to notify the company or health maintenance organization of acceptance of the counter offer, during which time coverage will be deemed to be in effect under the terms of the policy for which application has been made, but such coverage shall not extend beyond 30 calendar days following the date of issuance of the counter-offer by the insurance company or health maintenance organization. The insurance company or health maintenance organization shall promptly refund the premium upon notice of the insured's refusal to accept the counter-offer or upon expiration of such 30 calendar day period, whichever occurs first.

(2) If coverage is not in effect and payment therefor is in the possession of the company, health maintenance organization or the agent, the underwriting decision shall be made within 20 business days from receipt of the application by the agent unless the underwriting decision is dependent upon substantive information available only from an independent source. In such cases, the underwriting decision shall be made within 10 business days from receipt of the external information by the party that makes the decision. The refund shall accompany the notice.
of an adverse underwriting decision, or such refund may separately be
returned in not more than 10 days from the date of such notice. The notice
shall contain language indicating that any refund due will be returned in
not more than 10 days from the date of such notice.

Sec. 2. K.S.A. 40-2,112 is hereby repealed.

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

Section 1. K.S.A. 2012 Supp. 40-401 is hereby amended to read as
follows: 40-401. Any 10 or more persons, a majority of whom are
citizens of this state, may associate in accordance with the provisions of
this code and form an incorporated company, upon either the stock or
mutual plan, to make insurance upon the lives of persons and every
insurance appertaining thereto or connected therewith and to grant,
purchase or dispose of annuities, and to issue funding agreements,
guaranteed investment contracts and synthetic guaranteed investment
contracts. Such companies may incorporate: (a) In their policies
provisions or conditions for the waiver of premiums or for the granting
of an annuity to the insured, or for special surrender values or other
benefits in the event the insured shall from any cause become
unemployed or totally and permanently disabled; (b) in their policies
provisions for acceleration of life or annuity benefits in advance of the
time they would otherwise be payable subject to such reserve and other
regulatory standards as the commissioner may prescribe by rules and
regulations, except that any provision providing for acceleration of life
or annuity benefits for persons diagnosed as having a medical condition
usually requiring continuous confinement for the rest of the person's
life in a nursing home or other eligible facility as defined in the policy,
may also provide for acceleration of benefits upon diagnosis of such
condition even if the person is not confined in a nursing home or similar
facility; (c) in their policies and annuity contracts provisions or
conditions for waiver of surrender charges upon terms and conditions as
specified in the policy or contract, subject to rules and regulations
adopted by the commissioner of insurance; or (d) in their policies
provisions for the payment of a larger sum if death is caused by accident
than if it results from any other causes.

Prior to the payment of any accelerated benefit, the insurer shall
receive from any assignee or irrevocable beneficiary of the policy a
signed acknowledgment of concurrence for the payment. For the
purposes of this section, "totally and permanently disabled" means
disabled continuously for a period, such period to be specified in any
such provision, of not less than 60 days nor more than one year, except
this provision shall not apply to and specifically excludes group life
insurance. Such company may make insurance on the health of
individuals, against accidental personal injury, disablement or death and
against loss, liability or expense on account thereof. Such company so
transacting such health and accident insurance business, or either kind,
shall maintain statutory and separate reserves for such business, shall
issue such contracts only in separate policies except as otherwise
permitted herein and shall make separate reports to the commissioner of
insurance of the premiums received and expenses and losses incurred in
connection with such business, except that such reports will not be
required for accelerated benefits incorporated in a life or annuity policy.

Long-term care insurance meeting the applicable requirements of K.S.A.
40-2227 and 40-2228, and amendments thereto, may be incorporated in
life insurance policies and annuities if approved by the commissioner.

The business of life insurance in this state shall not be in any way
conducted or transacted by any company which in this state makes
insurance on marine, fire, inland or any other like risks, except that:
(a) Life, health and accident insurance on the group or industrial plan may
be combined in one policy, which shall show the premium charged for
life insurance and the premium charged for health and accident
insurance, and the insured, at the insured's option, may discontinue
either and by payment of the stated premium continue the other; and (b)
(1) specified disease or critical illness riders, or both, meeting the
applicable requirements of K.S.A. 40-2201 et seq., and amendments
thereof, and article 4 of the Kansas administrative regulations, may be
incorporated in life insurance policies which shall show the premium
charged for specified disease or critical illness, or both, insurance and the
premium charged for life insurance; and (2) the insured, at the insured's
option, may discontinue the disease or critical illness rider, or both, and
continue the life insurance policy by payment of the stated premium. The
amount of capital stock of a company organized on the stock plan shall
be not less than $600,000.

Companies organized on the mutual plan shall be required to have
applications from at least 200 persons for insurance upon their lives,
aggregating not less than $400,000, upon which one full annual
premium in cash shall have been paid. No such company shall transact
any business of insurance until, if a stock company, all the capital stock
named in its charter has been paid in cash including all contributions to
surplus to be made by the original purchasers of such stock. The surplus
shall be at least $600,000, and at least $400,000 in securities authorized
by this code shall have been deposited with the commissioner of
insurance pursuant to K.S.A. 40-229a, and amendments thereto, and if a
mutual company, a guaranty fund of at least $1,200,000, and at least
$400,000 of which shall be in securities as authorized in this code and
deposited with the commissioner of insurance pursuant to K.S.A. 40-
229a, and amendments thereto. The guaranty fund may be returned to
the contributors with interest at 6% per annum whenever the surplus
shall equal the amount of such guaranty fund and interest, and no
company shall transact any business of insurance unless it shall
maintain the capital or surplus or both required of a company
commencing to transact business, or, if a mutual company, the required
number and amount of applications for insurance have been received
and the annual premiums collected in cash. The securities deposited
pursuant to this section shall be held by the commissioner of insurance
in trust for the benefit and protection of the policyholders or creditors,
or both, of the company depositing the same and may be withdrawn only
upon order of the commissioner of insurance.

The commissioner of insurance may adopt rules and regulations to
implement the provisions of this section.

Sec. 2. K.S.A. 2012 Supp. 40-401 is hereby repealed.

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