

## CHAPTER 42

HOUSE BILL No. 2325  
(Amended by Chapter 186)

AN ACT relating to insurance; pertaining to guaranteed investment contracts and related types of insurance contracts; amending K.S.A. 40-401, 40-436 and 40-3641 and repealing the existing sections.

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

Section 1. K.S.A. 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 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, 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. 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.

Sec. 2. K.S.A. 40-436 is hereby amended to read as follows: 40-436.

(a) Any domestic life insurance company may after adoption of a resolution by its board of directors, establish one or more separate accounts, and may allocate to such separate account or accounts any amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, paid to the company which are to be applied under the terms of an individual or group life or annuity contract, *funding agreement or guaranteed investment contract*, issued in connection therewith to provide benefits payable in fixed or in variable amounts, or in both, and such contracts may provide other benefits.

(b) The amounts allocated to each such account and accumulations thereon may be invested and reinvested in any class of investments which may be authorized in the contracts without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies. ~~Provided, That~~ To the extent that the company's reserve liability with regard to (1) benefits guaranteed as to amount and duration, and (2) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the laws of this state governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the company.

(c) The income, if any, and gains and losses, realized or unrealized, on each account shall be credited to or charged against the amounts allocated to the account in accordance with the contracts, without regard to other income, gains or losses of the company.

(d) Assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then in accordance with the terms of the contracts. ~~Provided, That~~ The portion of the assets of such separate account at least equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (b) hereof, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this act shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liability arising out of any other business the company may conduct.

(f) The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the commissioner of insurance. No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate

accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (1) by a transfer of cash, or (2) by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

(g) If any contract provides for payment of benefits in variable amounts, it shall contain a statement of the essential features of the procedure to be followed by the company in determining the dollar amount of such variable benefits. Any such contract, including a group contract, and any certificate issued thereunder shall state that such dollar amount may decrease or increase and shall contain on its first page a statement that the benefits thereunder are on a variable basis.

(h) A foreign or alien life insurance company authorized to do business in this state may be authorized to issue or deliver contracts in this state providing for payments which vary directly according to investment experience only if authorized to issue such contracts under the laws of its domicile.

(i) No domestic life insurance company shall be authorized to issue such contracts, and no foreign or alien life insurance company shall be authorized to issue or deliver such contracts in this state, until such company has satisfied the commissioner that its condition and methods of operation in connection with the issuance of such contracts will not be such as to render its operation hazardous to the public or to its policyholders in this state. In determining the qualification of a company to issue or deliver such contracts in this state, the commissioner shall consider, among other things, the history and financial condition of the company; the character, responsibility, and general fitness of the officers and directors of the company; and in the case of a foreign or alien company, whether the regulation provided by the laws of its domicile provides a degree of protection to policyholders and the public substantially equal to that provided by this section and the rules and regulations issued by the commissioner pursuant thereto. The state of entry of an alien company shall be deemed its place of domicile for this purpose.

(j) Every life insurance company which issues or delivers such contracts in this state shall file with the commissioner, in addition to the annual statement required by K.S.A. 40-225, *and amendments thereto*, such other periodic or special reports as the commissioner may prescribe.

(k) Any domestic life insurance company which establishes one or more separate accounts pursuant to this section, may amend its charter or bylaws to provide for special voting rights and procedures for the owners of contracts under such separate account relating to investment policy, investment advisory services and selection of independent public accountants, in relation to the administration of the assets in any such separate account and such other matters as the company deems necessary in the management of the assets in any such separate account. This provision shall not in any way affect existing laws pertaining to the voting rights of the company's policyholders.

(l) The commissioner shall have the sole and exclusive jurisdiction and authority to regulate the issuance and sale of such contracts and to promulgate such reasonable rules and regulations as may be necessary to carry out the purposes and provisions of this act, and such contracts, the companies which issue them, and the agents or other persons who sell them, shall not be subject to the provisions of article 12 of chapter 17 of the Kansas Statutes Annotated, *and amendments thereto*, nor to the jurisdiction of the securities commissioner of this state.

Sec. 3. K.S.A. 40-3641 is hereby amended to read as follows: 40-3641. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(a) Class 1. The costs and expenses of administration during rehabilitation and liquidation including, but not limited to the following;

(1) The actual and necessary costs of preserving or recovering the

assets of the insurer;

(2) compensation for all authorized services rendered in the rehabilitation and liquidation;

(3) any necessary filing fees;

(4) the fees and mileage payable to witnesses;

(5) authorized reasonable attorney fees and other professional services rendered in the rehabilitation and liquidation;

(6) the reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.

(b) Class 2. Reasonable compensation to employees for services performed to the extent they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefits of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(c) Class 3. All claims under policies including claims for unearned premium or other premium refunds and such claims of the federal or any state or local government for losses incurred, ("loss claims") including third-party claims and all claims of a guaranty association or foreign guaranty association. All claims under life insurance *policies, funding agreements, guaranteed investment contracts, synthetic guaranteed investment contracts* and annuity policies, whether for death proceeds, annuity proceeds or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to an employee shall be treated as a gratuity.

(d) Class 4. Claims of general creditors including claims of ceding and assuming companies in their capacity as such.

(e) Class 5. Claims of the federal or any state or local government except those under Class 3. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to be equal to the class of claims under subsection (h).

(f) Class 6. Claims filed late or any other claims other than claims under subsections (g) and (h).

(g) Class 7. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(h) Class 8. The claims of shareholders or other owners in their capacity as shareholders.

Sec. 4. K.S.A. 40-401, 40-436 and 40-3641 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 29, 2005.

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