

HOUSE BILL No. 2339

By Committee on Insurance

2-14

1 AN ACT concerning ~~insurance; relating to adverse underwriting decisions;~~  
2 ~~allowing return of premiums separate from notice; amending K.S.A.~~  
3 ~~40-2,112 and repealing the existing section. life insurance; providing~~  
4 ~~for certain additional riders on life insurance policies; amending~~  
5 ~~K.S.A. 2012 Supp. 40-401 and repealing the existing section.~~  
6

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

8 ~~Section 1. K.S.A. 40-2,112 is hereby amended to read as follows: 40-~~  
9 ~~2,112. (a) In the event of an adverse underwriting decision the insurance~~  
10 ~~company, health maintenance organization or agent responsible for the~~  
11 ~~decision shall either provide the applicant, policyholder or individual~~  
12 ~~proposed for coverage with the specific reason or reasons for the adverse~~  
13 ~~underwriting decision in writing or advise such persons that upon written~~  
14 ~~request they may receive the specific reason or reasons in writing.~~

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

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

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

31 ~~(3) the names and addresses of the institutional sources that supplied~~  
32 ~~the specific items of information given pursuant to subsection (b)(2) if the~~  
33 ~~identity of any health care provider or health care institution is disclosed~~  
34 ~~either directly to the individual or to the designated health care provider,~~  
35 ~~whichever the insurance company, health maintenance organization or~~  
36 ~~agent prefers.~~

1 ~~(e) The obligations imposed by this section upon an insurance~~  
2 ~~company, health maintenance organization or agent may be satisfied by~~  
3 ~~another insurance company, health maintenance organization or agent~~  
4 ~~authorized to act on its behalf.~~

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

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

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

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

36 ~~(2) If coverage is not in effect and payment therefor is in the~~  
37 ~~possession of the company, health maintenance organization or the agent,~~  
38 ~~the underwriting decision shall be made within 20 business days from~~  
39 ~~receipt of the application by the agent unless the underwriting decision is~~  
40 ~~dependent upon substantive information available only from an~~  
41 ~~independent source. In such cases, the underwriting decision shall be made~~  
42 ~~within 10 business days from receipt of the external information by the~~  
43 ~~party that makes the decision. The refund shall may accompany the notice~~

1 ~~of an adverse underwriting decision, or such refund may separately be~~  
2 ~~returned in not more than 10 days from the date of such notice. The notice~~  
3 ~~shall contain language indicating that any refund due will be returned in~~  
4 ~~not more than 10 days from the date on such notice.~~

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

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

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

36 *Prior to the payment of any accelerated benefit, the insurer shall*  
37 *receive from any assignee or irrevocable beneficiary of the policy a*  
38 *signed acknowledgment of concurrence for the payment. For the*  
39 *purposes of this section, "totally and permanently disabled" means*  
40 *disabled continuously for a period, such period to be specified in any*  
41 *such provision, of not less than 60 days nor more than one year, except*  
42 *this provision shall not apply to and specifically excludes group life*  
43 *insurance. Such company may make insurance on the health of*

1 *individuals, against accidental personal injury, disablement or death and*  
2 *against loss, liability or expense on account thereof. Such company so*  
3 *transacting such health and accident insurance business, or either kind,*  
4 *shall maintain statutory and separate reserves for such business, shall*  
5 *issue such contracts only in separate policies except as otherwise*  
6 *permitted herein and shall make separate reports to the commissioner of*  
7 *insurance of the premiums received and expenses and losses incurred in*  
8 *connection with such business, except that such reports will not be*  
9 *required for accelerated benefits incorporated in a life or annuity policy.*  
10 *Long-term care insurance meeting the applicable requirements of K.S.A.*  
11 *40-2227 and 40-2228, and amendments thereto, may be incorporated in*  
12 *life insurance policies and annuities if approved by the commissioner.*

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

31 *Companies organized on the mutual plan shall be required to have*  
32 *applications from at least 200 persons for insurance upon their lives,*  
33 *aggregating not less than \$400,000, upon which one full annual*  
34 *premium in cash shall have been paid. No such company shall transact*  
35 *any business of insurance until, if a stock company, all the capital stock*  
36 *named in its charter has been paid in cash including all contributions to*  
37 *surplus to be made by the original purchasers of such stock. The surplus*  
38 *shall be at least \$600,000, and at least \$400,000 in securities authorized*  
39 *by this code shall have been deposited with the commissioner of*  
40 *insurance pursuant to K.S.A. 40-229a, and amendments thereto, and if a*  
41 *mutual company, a guaranty fund of at least \$1,200,000, and at least*  
42 *\$400,000 of which shall be in securities as authorized in this code and*  
43 *deposited with the commissioner of insurance pursuant to K.S.A. 40-*

1 *229a, and amendments thereto. The guaranty fund may be returned to*  
2 *the contributors with interest at 6% per annum whenever the surplus*  
3 *shall equal the amount of such guaranty fund and interest, and no*  
4 *company shall transact any business of insurance unless it shall*  
5 *maintain the capital or surplus or both required of a company*  
6 *commencing to transact business, or, if a mutual company, the required*  
7 *number and amount of applications for insurance have been received*  
8 *and the annual premiums collected in cash. The securities deposited*  
9 *pursuant to this section shall be held by the commissioner of insurance*  
10 *in trust for the benefit and protection of the policyholders or creditors,*  
11 *or both, of the company depositing the same and may be withdrawn only*  
12 *upon order of the commissioner of insurance.*

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

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

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