

HOUSE BILL No. 2483

By Committee on Federal and State Affairs

2-17

9 AN ACT concerning insurance; requiring certain insurance policies to
10 provide for designation of third parties to receive notices; amending
11 K.S.A. 40-278, 40-2,121, 40-2,122, 40-410 and 40-411 and K.S.A. 2004
12 Supp. 40-276a and repealing the existing sections.
13

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

15 Section 1. K.S.A. 2004 Supp. 40-276a is hereby amended to read as
16 follows: 40-276a. (a) Any insurance company that denies renewal of an
17 automobile liability insurance policy in this state shall give at least 30 days
18 written notice to the named insured, at ~~his~~ *such insured's* last known
19 address, *and to a third party designated by the insured in accordance*
20 *with subsection (c), if any, at such designated third party's address,* or
21 cause such notice to be given by a licensed agent of its intention not to
22 renew such policy. No insurance company shall deny the renewal of an
23 automobile liability insurance policy except in one or more of the follow-
24 ing circumstances or as permitted in subsection (b):

25 (1) When such insurance company is required or has been permitted
26 by the commissioner of insurance, in writing, to reduce its premium vol-
27 ume in order to preserve the financial integrity of such insurer;

28 (2) when such insurance company ceases to transact such business in
29 this state;

30 (3) when such insurance company is able to show competent medical
31 evidence that the insured has a physical or mental disablement that im-
32 pairs his ability to drive in a safe and reasonable manner;

33 (4) when unfavorable underwriting factors, pertinent to the risk, are
34 existent, and of a substantial nature, which could not have reasonably
35 been ascertained by the company at the initial issuance of the policy or
36 the last renewal thereof;

37 (5) when the policy has been continuously in effect for a period of
38 five years. Such five-year period shall begin at the first policy anniversary
39 date following the effective date of the policy, except that if such policy
40 is renewed or continued in force after the expiration of such period or
41 any subsequent five-year period, the provisions of this subsection shall
42 apply in any such subsequent period; or

43 (6) when any of the reasons specified as reasons for cancellation in

1 K.S.A. 40-277, *and amendments thereto*, are existent, except that (A)
2 when failure to renew is based upon termination of agency contract, ob-
3 ligation to renew will be satisfied if the insurer has manifested its will-
4 ingness to renew, and (B) obligation to renew is terminated on the effec-
5 tive date of any other automobile liability insurance procured by the
6 named insured with respect to any automobile designated in both policies.
7 Renewal of a policy shall not constitute a waiver or estoppel with re-
8 spect to grounds for cancellation which existed before the effective date
9 of such renewal. Nothing in this section shall require an insurance com-
10 pany to renew an automobile liability insurance policy if such renewal
11 would be contrary to restrictions of membership in the company which
12 are contained in the articles of incorporation or the bylaws of such
13 company.

14 (b) (1) No insurance company shall refuse to renew a policy until
15 after June 30, 2002, based on an insured's failure to maintain membership
16 in a bona fide association, until both the insurance company and bona
17 fide association have complied with the requirements of this subsection.
18 No insurance company shall refuse to renew any coverage continuously
19 in effect before July 1, 2002, unless:

20 (A) The application for insurance and the insurance policy shall
21 clearly disclose that both the payment of dues and current membership
22 in the bona fide association are prerequisites to obtaining or renewing
23 the insurance;

24 (B) the bona fide association has filed a certification with the com-
25 missioner of insurance verifying the eligibility of the insurance company
26 to refuse to renew an insurance policy based on the membership in the
27 bona fide association; and

28 (C) any money paid to the bona fide association as a membership fee:

29 (i) Shall not be used by the insurance company directly or indirectly
30 to defray any costs or expenses in connection with the sale or purchase
31 of the insurance; and

32 (ii) shall be set independently of any factor used by the insurance
33 company to make any judgment or determination about the eligibility of
34 any individual to purchase or renew such insurance. For the purposes of
35 this provision, the individual may be a member of the bona fide organi-
36 zation or an employee or dependent of such a member.

37 (2) (A) Upon request the bona fide association shall file a statement
38 with the commissioner of insurance verifying that the bona fide associa-
39 tion meets the requirements of this paragraph.

40 (B) For the purposes of this subsection, "bona fide association"
41 means an association which:

42 (i) Has been in active existence for at least five consecutive years
43 immediately preceding the date the statement is filed;

1 (ii) has been formed and maintained in good faith for purposes other
2 than obtaining or providing insurance and does not condition member-
3 ship in the association on the purchase of insurance;

4 (iii) has articles of incorporation and bylaws or other similar governing
5 documents;

6 (iv) has a relationship with one or more specific insurance companies
7 and identifies each such insurance company; and

8 (v) and does not condition membership in the association or set mem-
9 bership fees on the eligibility of any individual to purchase or renew the
10 insurance or on any factor that the insurance company could not lawfully
11 consider when setting rates. For the purposes of this provision, the in-
12 dividual may be a member of the bona fide organization or an employee
13 or dependent of such a member.

14 (3) Membership fees collected by the bona fide association shall not
15 be deemed to be premiums of the insurance company that issued the
16 coverage unless the bona fide association:

17 (A) Uses any portion of such membership fees directly or indirectly
18 to defray any costs or expenses in connection with the sale or purchase
19 of the insurance; or

20 (B) sets or adjusts membership fees for any member of the bona fide
21 association based on any factor used by the insurance company that issues
22 the insurance to make any judgment or determination about the eligibility
23 of any individual to purchase or renew the insurance. For the purposes
24 of this provision, the individual may be a member of the bona fide or-
25 ganization or an employee or dependent of such a member.

26 (4) If the membership fees are determined to constitute premiums
27 pursuant to paragraph (3) of this subsection, the insurance company shall
28 not refuse to renew a policy as otherwise permitted by this subsection.

29 *(c) Each insurance company that issues automobile liability insurance*
30 *shall, at the time of application or renewal of such policy, shall provide a*
31 *form upon which the applicant or insured can elect whether or not to*
32 *have a copy of all notices issued by the insurance company, or any agent*
33 *thereof, pursuant to the terms of the policy to a designated third party.*
34 *If an applicant or insured elects to have notices sent to a third party, the*
35 *applicant or insured shall provide the address of the designated third*
36 *party. Any notice sent to a designated third party shall be in addition to*
37 *and not in lieu of notice to the insured.*

38 Sec. 2. K.S.A. 40-278 is hereby amended to read as follows: 40-278.
39 When a policy of automobile liability insurance as defined in K.S.A. 40-
40 276, and amendments thereto, is canceled, or nonrenewed other than for
41 nonpayment of premium by an insurance company, such insurer shall
42 notify the named insured and any third party designated by the insured
43 pursuant to K.S.A. 40-276a, and amendments thereto, of his possible el-

1 ibility for such coverage through the Kansas automobile insurance plan.
2 Such notice shall accompany or be included in the notice of cancellation,
3 or nonrenewal, given by the insurer and shall state that such notice of
4 availability of the Kansas automobile insurance plan is given pursuant to
5 the provisions of this act.

6 Sec. 3. K.S.A. 40-2,121 is hereby amended to read as follows: 40-
7 2,121. (a) Any insurance company that denies renewal or substitution of
8 similar coverage for the same exposures under any property or casualty
9 insurance policy which is used primarily for business or professional needs
10 shall give at least 60 days' written notice to the named insured at such
11 person's last known address *and to a third party designated by the in-*
12 *sured, in accordance with the provisions of subsection (b), if any, at such*
13 *third party's address* of the insurance company's intention not to renew
14 such policy. The company may satisfy this obligation by causing such
15 notice to be given by a licensed agent.

16 (b) *Each insurance company that issues property or casualty insur-*
17 *ance shall, at the time of application or renewal of such policy, shall*
18 *provide a form upon which the applicant or insured can elect whether or*
19 *not to have all notices issued by the insurance company, or any agent*
20 *thereof, pursuant to the terms of the policy, sent to a designated third*
21 *party. Any notice sent to a designated third party shall be in addition to*
22 *and not in lieu of notice to the insured.*

23 Sec. 4. K.S.A. 40-2,122 is hereby amended to read as follows: 40-
24 2,122. Any insurance company doing business in this state shall provide
25 to an insured *and to any third party designated by the insured or appli-*
26 *cant pursuant to K.S.A. 40-2,121, and amendments thereto*, a written ex-
27 planation specifically detailing the reasons why such company canceled
28 or denied renewal of an existing policy of insurance. There shall be no
29 liability on the part of and no cause of action of any nature shall arise
30 against any insurer, its authorized representative, its agents, its employ-
31 ees, or any firm, person or corporation furnishing to the insurer infor-
32 mation as to reasons for cancellation or denial of renewal of an existing
33 policy of insurance, for any statement made by any of them in any written
34 notice of cancellation or denial of renewal of an existing policy of insur-
35 ance, for the providing of information pertaining thereto, or for state-
36 ments made or evidence submitted at any hearings conducted in con-
37 nection therewith, if such information was provided in good faith and
38 without malice.

39 Sec. 5. K.S.A. 40-410 is hereby amended to read as follows: 40-410.
40 (a) It shall be unlawful for any life insurance company, other than frater-
41 nal, doing business in this state within six ~~(6)~~ months after default in
42 payment of any premium or installment of premium, to forfeit or cancel
43 any life insurance policy on account of nonpayment of any such premium

1 or installment of premium thereon, without first giving notice in writing
2 to the policyowner *and to a third party designated by the policy owner,*
3 *in accordance with the provisions of subsection (b), if any, at such third*
4 *party's address,* of such policy of its intention to forfeit or cancel the same;
5 *Provided, however,* That. This section shall not apply to any policy under
6 the terms of which the premium is to be paid weekly, biweekly or monthly
7 and under which a grace period of at least four ~~(4)~~ weeks is granted for
8 the payment of every premium after the first, during which time the
9 insurance shall continue in force, and shall not apply to general or blanket
10 contracts insuring groups of lives. Policyowner as used herein shall be the
11 owner of the policy as shown by the records of the life insurance company.
12 When the policyowner is other than the insured, the company, upon
13 specific written request by the insured to the company at its home office
14 at any time before a premium is due, shall thereafter furnish the insured
15 a duplicate of any notice required to be sent to the policyowner
16 hereunder.

17 *(b) Each life insurance company, other than fraternal, doing business*
18 *in this state shall, on or before July 1, 2006, for existing policyowners and*
19 *at the time of application for life insurance otherwise, provide a form on*
20 *which the policyowner or applicant can elect whether or not to have all*
21 *notices issued by the life insurance company, or any agent thereof, pur-*
22 *suant to the terms of the policy, sent to a designated third party. Any*
23 *notice sent to a designated third party shall be in addition to and not in*
24 *lieu of notice to the policyowner.*

25 Sec. 6. K.S.A. 40-411 is hereby amended to read as follows: 40-411.
26 Before any such cancellation or forfeiture can be made for the non-pay-
27 ment of any such premium the insurance company shall notify the poli-
28 cyowner *and any third party designated by the policyowner or applicant*
29 *pursuant to K.S.A. 40-410, and amendments thereto,* of any such policy
30 that the premium thereon, stating the amount thereof, is due and unpaid,
31 and of its intention to forfeit or cancel the same, and such policyowner
32 shall have the right, at any time within ~~thirty (30)~~ 30 days after such notice
33 has been duly deposited in the post office, postage prepaid, and addressed
34 to such policyowner *and any third party designated by the policyowner*
35 *or applicant pursuant to K.S.A. 40-410, and amendments thereto,* to the
36 address last known by such company, to pay such premium; ~~Provided,~~
37 That. In lieu of the notice hereinbefore provided, in the case of policies
38 providing for a period of grace of not less than ~~thirty (30)~~ 30 days, or one
39 month, for the payment of premiums and containing any provision for
40 cancellation or forfeiture in case of nonpayment of premiums at the end
41 of such period, the insurance company may, not more than ~~thirty (30)~~ 30
42 days prior to the date specified in such policy when any premium will
43 become due and payable without grace, in like manner notify the poli-

1 cyowner *and any third party designated by the policyowner or applicant*
2 *pursuant to K.S.A. 40-410, and amendments thereto*, under any such pol-
3 icy, of the date when such premium will fall due, stating the amount
4 thereof, and its intention to forfeit or cancel the same if such premium
5 be not paid within the period of grace provided in the policy; and any
6 attempt on the part of such insurance company, within six ~~(6)~~ months
7 after default in the payment of any premium, to cancel or forfeit any such
8 policy without the notice herein provided shall be null and void. The
9 affidavit of any responsible officer, clerk or agent of the corporation au-
10 thorized to mail such notice, that the notice required by this section has
11 been duly addressed and mailed by the corporation issuing such policy
12 shall be prima facie evidence that such notice has been duly given.

13 Sec. 7. K.S.A. 40-278, 40-2,121, 40-2,122, 40-410 and 40-411 and
14 K.S.A. 2004 Supp. 40-276a are hereby repealed.

15 Sec. 8. This act shall take effect and be in force from and after its
16 publication in the statute book.