

As Amended by House Committee

As Amended by Senate Committee

Session of 2008

SENATE BILL No. 498

By Committee on Financial Institutions and Insurance

1-29

12 AN ACT concerning insurance; relating to the amount of certain pen-
13 alties; amending K.S.A. 40-2,125 and repealing the existing section.

14

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

16 Section 1. K.S.A. 40-2,125 is hereby amended to read as follows: 40-
17 2,125. (a) If the commissioner determines after notice and opportunity
18 for a hearing that any person has engaged or is engaging in any act or
19 practice constituting a violation of any provision of Kansas insurance stat-
20 utes or any rule and regulation or order thereunder, the commissioner
21 may in the exercise of discretion, order any one or more of the following:

22 (1) Payment of a monetary penalty of not more than \$1,000 for each
23 and every act or violation, unless the person knew or reasonably should
24 have known such person was in violation of the Kansas insurance statutes
25 or any rule and regulation or order thereunder, in which case the penalty
26 shall be not more than \$2,000 for each and every act or violation;

27 (2) suspension or revocation of the person's license or certificate if
28 such person knew or reasonably should have known that such person was
29 in violation of the Kansas insurance statutes or any rule and regulation or
30 order thereunder; or

31 (3) that such person cease and desist from the unlawful act or practice
32 and take such affirmative action as in the judgment of the commissioner
33 will carry out the purposes of the violated or potentially violated provision.

34 (b) ~~If any person fails to file any report or other information with the~~
35 ~~commissioner as required by statute or fails to respond to any proper~~
36 ~~inquiry of the commissioner, the commissioner, after notice and oppor-~~
37 ~~tunity for hearing, may impose a penalty of up to \$500 \$1,000 for each~~
38 ~~violation or act, along with an additional penalty of up to \$100 \$500 for~~
39 ~~each week thereafter that such report or other information is not provided~~
40 ~~to the commissioner. **If any person fails to file any report or other**~~
41 ~~**information with the commissioner as required by statute or fails**~~
42 ~~**to respond to any proper inquiry of the commissioner, the commis-**~~
43 ~~**sioner, after notice and opportunity for hearing, in addition to any**~~

1 ~~other penalty provided by law, may impose a civil penalty in the~~
2 ~~amount fixed by rules and regulations of the commissioner in an~~
3 ~~amount not less than \$500 nor more than \$5,000 for each violation~~
4 ~~and, in the case of a continuing violation, every day such violation~~
5 ~~continues shall be deemed a separate violation~~ may impose a civil
6 penalty of up to \$1,000 for each violation or act, along with an
7 additional penalty of up to \$500 for each week thereafter that such
8 report or other information is not provided to the commissioner.

9 (c) If the commissioner makes written findings of fact that there is a
10 situation involving an immediate danger to the public health, safety or
11 welfare or the public interest will be irreparably harmed by delay in is-
12 suing an order under subsection (a)(3), the commissioner may issue an
13 emergency temporary cease and desist order. Such order, even when not
14 an order within the meaning of K.S.A. 77-502 and amendments thereto,
15 shall be subject to the same procedures as an emergency order issued
16 under K.S.A. 77-536 and amendments thereto. Upon the entry of such
17 an order, the commissioner shall promptly notify the person subject to
18 the order that: (1) It has been entered, (2) the reasons therefor and (3)
19 that upon written request within 15 days after service of the order the
20 matter will be set for a hearing which shall be conducted in accordance
21 with the provisions of the Kansas administrative procedure act. If no hear-
22 ing is requested and none is ordered by the commissioner, the order will
23 remain in effect until it is modified or vacated by the commissioner. If a
24 hearing is requested or ordered, the commissioner, after notice of and
25 opportunity for hearing to the person subject to the order, shall by written
26 findings of fact and conclusions of law vacate, modify or make permanent
27 the order.

28 (d) For purposes of this section:

29 (1) "Person" means any individual, corporation, association, partner-
30 ship, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit
31 society and any other legal entity engaged in the business of insurance,
32 ~~or any person purchasing an interest in a life insurance policy which is~~
33 ~~licensed pursuant to K.S.A. 40-2,141 and amendments thereto,~~ rating
34 organization, third party administrator, nonprofit dental service corpo-
35 ration, nonprofit medical and hospital service corporation, automobile
36 club, premium financing company, health maintenance organization, in-
37 surance holding company, mortgage guaranty insurance company, risk
38 retention or purchasing group, prepaid legal and dental service plan, cap-
39 tive insurance company, automobile self-insurer or reinsurance inter-
40 mediary. The term "person" shall not ~~include insurance agents licensed~~
41 ~~pursuant to K.S.A. 40-241 or 40-246, and amendments thereto, insurance~~
42 ~~brokers licensed pursuant to K.S.A. 40-3701 et seq., and amendments~~
43 ~~thereto, or employees of licensed agents or brokers~~ **include insurance**

1 ***agents and brokers as such terms are defined in K.S.A. 2007 Supp.***
2 ***40-4902 and amendments thereto.***

3 (2) “Commissioner” means the commissioner of insurance of this
4 state.

5 Sec. 2. K.S.A. 40-2,125 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.