

CHAPTER 128

HOUSE Substitute for SENATE BILL No. 207

(Amended by Chapter 194)

AN ACT concerning insurance; relating to fraud prevention; amending K.S.A. 40-2,118 and 40-2,119 and repealing the existing sections.

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

Section 1. K.S.A. 40-2,118 is hereby amended to read as follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

(b) *An insurer that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed shall provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may require.*

(c) *Any other person that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed may provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may request.*

(d) (1) *Each insurer shall have antifraud initiatives reasonably calculated to detect fraudulent insurance acts. Antifraud initiatives may include: fraud investigators, who may be insurer employees or independent contractors; or an antifraud plan submitted to the commissioner no later than July 1, 2007. Each insurer that submits an antifraud plan shall notify the commissioner of any material change in the information contained in the antifraud plan within 30 days after such change occurs. Such insurer shall submit to the commissioner in writing the amended antifraud plan.*

The requirement for submitting any antifraud plan, or any amendment thereof, to the commissioner shall expire on the date specified in paragraph (2) of this subsection unless the legislature reviews and reenacts the provisions of paragraph (2) pursuant to K.S.A. 45-229 and amendments thereto.

(2) *Any antifraud plan, or any amendment thereof, submitted to the commissioner for informational purposes only shall be confidential and not be a public record and shall not be subject to discovery or subpoena in a civil action unless following an in camera review, the court determines that the antifraud plan is relevant and otherwise admissible under the rules of evidence set forth in article 4, chapter 60 of the Kansas Statutes Annotated, and amendments thereto. The provisions of this paragraph shall expire on July 1, 2011, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2011.*

~~(b)~~ (e) Except as otherwise specifically provided in K.S.A. 21-3718 and amendments thereto and K.S.A. 44-5,125 and amendments thereto, a fraudulent insurance act shall constitute a severity level 6, nonperson felony if the amount involved is \$25,000 or more; a severity level 7, nonperson felony if the amount is at least \$5,000 but less than \$25,000; a severity level 8, nonperson felony if the amount is at least \$1,000 but less than \$5,000; a severity level 9, nonperson felony if the amount is at least \$500 but less than \$1,000; and a class C nonperson misdemeanor if the amount is less than \$500.

~~(c)~~ (f) In addition to any other penalty, a person who violates this statute shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such violation. An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

~~(d)~~ (g) This act shall apply to all insurance applications, ratings, claims

and other benefits made pursuant to any insurance policy.

Sec. 2. K.S.A. 40-2,119 is hereby amended to read as follows: 40-2,119. In the absence of fraud, bad faith or malice, no person *or insurer* shall be subject to civil liability for libel, slander or any other relevant ~~to~~ cause of action:

~~(1)~~ (a) For filing reports or furnishing other information required by chapter 40 of the Kansas Statutes Annotated, *and amendments thereto*, or required by the commissioner under the authority granted in chapter 40 of the Kansas Statutes Annotated, *and amendments thereto*;

~~(2)~~ (b) for any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents and employees;

~~(3)~~ (c) for any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of chapter 40 of the Kansas Statutes Annotated, *and amendments thereto*;

~~(4)~~ (d) for any such information furnished in reports to the insurance department, *regulatory agencies of any other state, the national association of insurance commissioners or any organization established to detect and prevent fraudulent insurance acts, their agents, employees or designees*; or

~~(5)~~ (e) for the publication of any report or bulletin related to the official activities of the insurance department by the commissioner or any employee of the insurance department. Nothing herein is intended to abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

Sec. 3. K.S.A. 40-2,118 and 40-2,119 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 17, 2006.
