CHAPTER 150

SENATE BILL No. 271

AN ACT concerning insurance; relating to certain forms and rate filings; relating to examination reports of insurance companies; relating to insurance fraud; relating to long-term care insurance; relating to prompt payment of claims; amending K.S.A. 40-2441 and K.S.A. 2006 Supp. 40-209, 40-216, 40-2,118 and 40-955 and repealing the existing sections; also repealing K.S.A. 2006 Supp. 40-955a.

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

Section 1. K.S.A. 2006 Supp. 40-216 is hereby amended to read as follows: 40-216. (a) (1) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state.

(2) (A) Except as provided in subparagraph (B), each contract of insurance or indemnity issued or delivered in this state shall be effective on filing, or any subsequent date selected by the insurer, unless the commissioner disapproves such contract of insurance within 30 days after filing because the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet the requirements of this act.

(B) The following contracts of insurance or indemnity shall not be subject to the provisions of subsection (A):

(i) Contracts pertaining to large risks as defined in ~~K.S.A. 40-955(i)~~ *subsection (i) of K.S.A. 40-955*, and amendments thereto, which are exempt from the filing requirements of this section;

(ii) personal lines contracts filed in accordance with paragraph (3) of this section;

(iii) any form filing for the basic coverage required by K.S.A. 40-3401 et seq., and amendments thereto; and

(iv) form filing for workers compensation.

No form filing listed in clauses (iii) and (iv) of this subparagraph shall be used in this state by any insurer until such form filing has been approved by the commissioner.

(3) Each personal lines contract of insurance or indemnity issued or delivered in this state shall be on file for a period of 30 days before becoming effective unless the commissioner disapproves such personal lines contract if the rates are determined by the commissioner to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet the requirements of this act. For the purposes of this paragraph, the term "personal lines" shall mean insurance for noncommercial automobile, homeowners, dwelling, fire and renters insurance policies as defined by the commissioner by rules and regulations.

(4) Under such rules and regulations as the commissioner of insurance shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing forms of contracts of insurance or indemnity, which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make an examination to ascertain whether any forms affected by such order meet the standards of this code.

(5) The failure of any insurance company to comply with this section shall not constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation to file its contracts of insurance or indemnity either individually or by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer.

(b) The commissioner of insurance shall allow any insurance company authorized to transact business in this state to deliver to any person in this state any contract of insurance or indemnity, including any explanatory materials, written in any language other than the English language under the following conditions:

(1) The insured or applicant for insurance who is given a copy of the same contract of insurance or indemnity or explanatory materials written

in the English language;

(2) the English language version of the contract for insurance or indemnity or explanatory materials delivered shall be the controlling version; and

(3) any contract of insurance or indemnity or explanatory materials written in any language other than English shall contain a disclosure statement in 10 point boldface type, printed in both the English language and the other language used, stating the English version of the contract of insurance or indemnity is the official or controlling version and that the version is written in any language other than English is furnished for informational purposes only.

(c) All contracts of insurance or indemnity that are required to be filed with the commissioner of insurance shall be accompanied by any version of such contract of insurance or indemnity written in any language other than the English language.

(d) Any insurance company or insurer, including any agent or employee thereof, who knowingly misrepresents the content of a contract of insurance or indemnity or explanatory materials written in a language other than the English language shall be deemed to have violated the unfair trade practice law.

(e) For the purposes of this section, the term "contract of insurance or indemnity" shall include any rider, endorsement or application pertaining to such contract of insurance or indemnity.

(f) (1) If at any time after a filing becomes effective, the commissioner finds that such filing does not comply with this act, after the commissioner shall send written notice to every insurer and rating organization making such filing that a hearing concerning such filing will be held in not less than 10 days.

(2) After the hearing, the commissioner shall issue an order stating:

(A) The reasons why such filing failed to comply with the act; and

(B) the date, within a reasonable time after the date the order is issued, upon which such filing shall no longer be effective.

(3) A copy of the commissioner's order shall be sent to every insurer and rating organization that made such filing.

(4) No order issued pursuant to this subsection shall affect any contract or policy made or issued under such filing prior to the date specified upon which such filing shall no longer be effective.

Sec. 2. K.S.A. 2006 Supp. 40-955 is hereby amended to read as follows: 40-955. (a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. A filing and any supporting information shall be open to public inspection after it is filed with the commissioner. An insurer may satisfy its obligations to make such filings by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer. Nothing contained in this act shall be construed to require any insurer to become a member or subscriber of any rating organization.

(b) Certificate of insurance forms must be filed with the commissioner of insurance and approved prior to use. Notwithstanding the "large risk" filing exemption in subsection (j), a certificate of insurance cannot be used to modify, alter or amend the insurance policy it describes. The certificate of insurance shall contain the following or similar language: The certificate of insurance neither affirmatively nor negatively amends, extends or alters the coverage afforded by the policies listed thereon. An industry standard setting organization may be authorized by the commissioner of insurance to file certificate of insurance forms on behalf of authorized insurers.

~~(b)~~ *(c)* Any rate filing for the basic coverage required by K.S.A. 40-3401 et seq. and amendments thereto, loss costs filings for workers compensation, and rates for assigned risk plans established by article 21 of chapter 40 of the Kansas Statutes Annotated or rules and regulations established by the commissioner shall require approval by the commissioner before its use by the insurer in this state. ~~Policy forms shall require approval by the commissioner before use by insurers in this state, consistent with the requirements of K.S.A. 40-216 and amendments thereto.~~

As soon as reasonably possible after such filing has been made, the commissioner shall in writing approve or disapprove the same, except that any filing shall be deemed approved unless disapproved within 30 days of receipt of the filing.

~~(c)~~ *(d)* Any other rate filing, except personal lines filings, shall become effective on filing or any prospective date selected by the insurer, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fails to meet the requirements of this act. Personal lines rate filings shall be on file for a waiting period of 30 days before becoming effective, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet requirements of this act. The term "personal lines" shall mean insurance for noncommercial automobile, homeowners, dwelling fire-and-renters insurance policies, as defined by the commissioner by rules and regulations. A filing complies with this act unless it is disapproved by the commissioner within the waiting period or pursuant to subsection ~~(c)~~ *(f)*.

~~(d)~~ *(e)* In reviewing any rate filing the commissioner may require the insurer or rating organization to provide, at the insurer's or rating organization's expense, all information necessary to evaluate the reasonableness of the filing, to include payment of the cost of an actuary selected by the commissioner to review any rate filing, if the department of insurance does not have a staff actuary in its employ.

~~(e)~~ *(f) (1) (A)* If a filing is not accompanied by the information required by this act, the commissioner shall promptly inform the company or organization making the filing. The filing shall be deemed to be complete when the required information is received by the commissioner or the company or organization certifies to the commissioner the information requested is not maintained by the company or organization and cannot be obtained.

(B) If the commissioner finds a filing does not meet the requirements of this act, the commissioner shall send to the insurer or rating organization that made the filing, written notice of disapproval of the filing, specifying in what respects the filing fails to comply and stating the filing shall not become effective.

(C) If at any time after a filing becomes effective, the commissioner finds a filing does not comply with this act, the commissioner shall after a hearing held on not less than 10 days' written notice to every insurer and rating organization that made the filing issue an order specifying in what respects the filing failed to comply with the act, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. Copies of the order shall be sent to such insurer or rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(2) (A) In the event an insurer or organization has no legally effective rate because of an order disapproving rates, the commissioner shall specify an interim rate at the time the order is issued. The interim rate may be modified by the commissioner on the commissioner's own motion or upon motion of an insurer or organization.

(B) The interim rate or any modification thereof shall take effect prospectively in contracts of insurance written or renewed 15 days after the commissioner's decision setting interim rates.

(C) When the rates are finally determined, the commissioner shall order any overcharge in the interim rates to be distributed appropriately, except refunds to policyholders the commissioner determines are de minimis may not be required.

(3) (A) Any person or organization aggrieved with respect to any filing that is in effect may make written application to the commissioner for a hearing thereon, ~~provided~~ *except that* the insurer or rating organization that made the filing may not proceed under this subsection. The application shall specify the grounds to be relied on by the applicant.

(B) If the commissioner finds the application is made in good faith, that the applicant would be so aggrieved if the applicant's grounds are established, and that such grounds otherwise justify holding such a hearing, the commissioner shall, within 30 days after receipt of the application, hold a hearing on not less than 10 days' written notice to the applicant and every insurer and rating organization that made such filing.

(C) Every rating organization receiving a notice of hearing or copy of an order under this section, shall promptly notify all its members or sub-

scribers affected by the hearing or order. Notice to a rating organization of a hearing or order shall be deemed notice to its members or subscribers.

~~(f)~~ *(g)* No insurer shall make or issue a contract or policy except in accordance with filings which have been filed or approved for such insurer as provided in this act.

(1) On an application for personal motor vehicle insurance where the applicant has applied for collision or comprehensive coverage, the applicant shall be allowed to identify a lienholder listed on the certificate of title for the motor vehicle described in the application.

(2) On an application for property insurance on real property, the applicant shall be allowed to identify a mortgagee listed on a mortgage for the real property described in the application.

~~(g)~~ *(h)* The commissioner may adopt rules and regulations to allow suspension or modification of the requirement of filing and approval of rates as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used.

~~(h)~~ *(i)* Except for workers compensation and employer's liability line, the following categories of commercial lines risks are considered special risks which are exempt from the filing requirements in this section: (1) Risks that are written on an excess or umbrella basis; (2) commercial risks, or portions thereof, that are not rated according to manuals, rating plans, or schedules including "a" rates; (3) large risks; and (4) special risks designated by the commissioner, including but not limited to risks insured under highly protected risks rating plans, commercial aviation, credit insurance, boiler and machinery, inland marine, fidelity, surety and guarantee bond insurance risks.

~~(i)~~ *(j)* For the purposes of this subsection, "large risk" means: (1) An insured that has total insured property values of $5,000,000 or more; (2) an insured that has total annual gross revenues of $10,000,000 or more; or (3) an insured that has in the preceding calendar year a total paid premium of $50,000 or more for property insurance, $50,000 or more for general liability insurance, or $100,000 or more for multiple lines policies.

~~(j)~~ *(k)* The exemption for any large risk contained in subsection (h) shall not apply to workers compensation and employer's liability insurance, insurance purchasing groups, and the basic coverage required by K.S.A. 40-3401 et seq. and amendments thereto.

~~(k)~~ *(l)* Underwriting files, premium, loss and expense statistics, financial and other records pertaining to special risks written by any insurer shall be maintained by the insurer and shall be subject to examination by the commissioner.

Sec. 3. K.S.A. 2006 Supp. 40-209 is hereby amended to read as follows: 40-209. (a) Any insurance company organized under the laws of any other country, state or territory, upon application, may be authorized to transact business in this state, when possessed of the required amount of paid-up capital and surplus, or surplus only if a mutual company, and:

(1) Has made the deposit required by this code with the department of insurance of this or any other state in the United States;

(2) participates to the extent possible in the insurance regulatory information system administered by the national association of insurance commissioners;

(3) has submitted an examination report of its financial condition and affairs which has been conducted by the insurance department of the state of domicile within ~~three~~ *five* years of the date of application unless the commissioner determines that an earlier report will satisfy the purpose of this provision;

(4) demonstrates that any majority ownership interests are in sound financial condition;

(5) is not owned, managed or controlled by persons previously convicted of criminal activity involving fraud or embezzlement or offenses of a similar nature;

(6) has been in operation at least three years and has been the subject of an examination of its affairs and financial condition other than its organizational examination. This requirement does not apply to subsidiary or affiliate companies with substantially the same management of an admitted company, a continuing corporation resulting from merger or consolidation or a company whose admission is determined by the commissioner to be in the best public interest;

(7) the company will not require immediate regulatory attention by the department upon admission pursuant to K.S.A. 40-222b and amendments thereto.

(b) The authority shall not be granted, continued or renewed to any insurance company which is controlled, as such word is defined in subsection (c) of K.S.A. 40-3302, and amendments thereto, by another state of the United States or by a foreign government, or by any political subdivision of either.

(c) Every such company shall file a certified copy of its charter or deed of settlement with the commissioner of insurance, together with a statement, under oath of the president, vice-president or other chief officer and the secretary of the company for which they act, stating the name of the company, the place where located, and the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state and a copy of the last annual report, if any was made, under any law of the state or country in which such company was incorporated.

(d) Upon the application of any such insurance company for a certificate of authority to transact business in this state, the commissioner of insurance shall be satisfied that the company is possessed of money and other admitted assets in excess of its liabilities, as herein provided, and that it has otherwise complied with all the other requirements of this code. The commissioner shall thereupon issue a certificate of authority to such company authorizing it to transact the classes of insurance permitted under its articles of incorporation and by the provisions of this code.

(e) The funds of any such insurance company, in excess of the minimum paid-up capital required by this code, may at all times be invested in such securities as are or may be authorized by the laws of the state in which such company is organized or in which it has and maintains its United States deposit.

(f) (1) Except as provided in paragraph (2), the commissioner of insurance may, upon renewal of a certificate of authority waive any of the above requirements except those relating to assets, capital and surplus.

(2) The commissioner of insurance may, at the commissioner's discretion, waive any of the above requirements for prescription drug plan sponsors as defined by 42 U.S.C. 1395w-151 as in effect on January 1, 2006.

(g) Whenever any insurance company organized under the laws of any other country, state or territory is issued a certificate of authority to transact insurance in this state by the commissioner of insurance pursuant to this section, such company shall not be required to comply with the provisions of the general corporation code relating to foreign corporations, nor shall any such company be required to file with the secretary of state its articles of incorporation, charter, bylaws or other documents, or any amendments thereof, unless specifically required to do so by law.

Sec. 4. K.S.A. 2006 Supp. 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 cal-

culated 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.

(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; and a class C nonperson misdemeanor if the amount is less than $1,000. ~~A fraudulent insurance act as defined in subsection (a), or any combination of such acts which occur in a period of six consecutive months,~~ *Any combination of fraudulent acts as defined in subsection (a) which occur in a period of six consecutive months which involves $25,000 or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block.*

(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.

(g) This act shall apply to all insurance applications, ratings, claims and other benefits made pursuant to any insurance policy.

New Sec. 5. (a) Sections 5 through 7, and amendments thereto, shall be known as the Kansas long-term care insurance prompt payment act and shall apply to any policy of long-term care insurance issued or renewed in this state.

(b) The provisions of the Kansas long-term care prompt payment act shall take effect and be in force on and after January 1, 2008.

New Sec. 6. As used in sections 5 through 7, and amendments thereto:

(a) The term "clean claim" means a claim that has no defect or impropriety, including any lack of required substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under the Kansas long-term care insurance prompt payment act.

(b) The term "claim" means a written proof of loss as defined in paragraph (7) of subsection (A) of K.S.A. 40-2203, and amendments thereto, or an electronic proof of loss which contains the information required by paragraph (7) of subsection (A) of K.S.A. 40-2203, and amendments thereto.

(c) The term "long-term care insurance" shall have the meaning ascribed to it in K.S.A. 40-2227 and amendments thereto.

New Sec. 7. (a) Within 30 days after receipt of any claim, and amendments thereto, any insurer issuing a policy of long-term care insurance shall pay a clean claim for reimbursement in accordance with this section or send a written or electronic notice acknowledging receipt of and the status of the claim. Such notice shall include the date such claim was received by the insurer and state that:

(1) The insurer refuses to reimburse all or part of the claim and spec-

ify each reason for denial; or

(2) additional information is necessary to determine if all or any part of the claim will be reimbursed and what specific additional information is necessary.

(b) If any insurer issuing a policy of long-term care insurance fails to comply with subsection (a), such insurer shall pay interest at the rate of 1% per month on the amount of the claim that remains unpaid 30 days after the receipt of the claim. The interest paid pursuant to this subsection shall be included in any late reimbursement without requiring the person who filed the original claim to make any additional claim for such interest.

(c) After receiving a request for additional information, the person claiming reimbursement shall submit all additional information requested by the insurer within 30 days after receipt of the request for additional information. Failure to furnish such additional information within the time required shall not invalidate nor reduce the claim if it was not reasonably possible to give such information within such time, provided such proof is furnished as soon as possible as defined (within the time prescribed) in paragraph (7) of subsection (A) of K.S.A. 40-2203, and amendments thereto.

(d) Within 30 days after receipt of all the requested additional information, an insurer issuing a policy of long-term care insurance shall pay a clean claim in accordance with this section or send a written or electronic notice that states:

(1) Such insurer refuses to reimburse all or part of the claim; and

(2) specifies each reason for denial. Any insurer issuing a policy of long-term care insurance that fails to comply with this subsection shall pay interest on any amount of the claim that remains unpaid at the rate of 1% per month.

(e) The provisions of subsection (b) shall not apply when there is a good faith dispute about the legitimacy of the claim, or when there is a reasonable basis supported by specific information that such claim was submitted fraudulently.

(f) Any violation of this act by an insurer issuing a policy of long-term care insurance with flagrant and conscious disregard of the provisions of this act or with such frequency as to constitute a general business practice shall be considered a violation of the unfair trade practices act in K.S.A. 40-2401 et seq. and amendments thereto.

(g) The commissioner of insurance shall adopt rules and regulations necessary to carry out the provisions of the Kansas long-term care insurance prompt payment act.

Sec. 8. K.S.A. 40-2441 is hereby amended to read as follows: 40-2441. As used in K.S.A. 40-2440 through 40-2442 and amendments thereto:

(a) The term "clean claim" means a claim that has no defect or impropriety, including any lack of required substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under the Kansas health care prompt payment act.

(b) The term "claim" means a written proof of loss as defined in paragraph (7) of subsection (A) of K.S.A. 40-2203, and amendments thereto, or an electronic proof of loss which contains the information required by paragraph (7) of subsection (A) of K.S.A. 40-2203, and amendments thereto.

(c) The term "policy of accident and sickness insurance" means any policy or contract insuring against loss resulting from sickness or bodily injury or death by accident, or both, any hospital, *dental* or medical expense policy, health, hospital, medical service corporation contract issued by a stock or mutual company or association, a health maintenance organization or any other insurer, third party administrator or other entity which pays claims pursuant to a policy of accident and sickness insurance. The term policy of accident and sickness insurance does not include any policy or contract of reinsurance, life insurance, endowment or annuity contract, policies or certificates covering only credit, disability income, long-term care, medicare supplement, ~~dental,~~ drug, or vision-care only policy, coverage issued as a supplement to liability insurance, insurance arising out of a workers compensation or similar law, automobile medical-payment insurance or insurance under which benefits are payable without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

Sec. 9. K.S.A. 40-2441 and K.S.A. 2006 Supp. 40-209, 40-216, 40-2,118, 40-955 and 40-955a are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 18, 2007.