

HOUSE BILL No. 2098

By Committee on Insurance

1-19

Proposed Amendment to HB 2098
For Senate Committee on Financial Institutions and Insurance
Office of Revisor of Statutes
March 15, 2023

1 AN ACT concerning insurance; relating to insurance laws and
2 enforcement thereof; adding certain legal entities to the definition of
3 "person"; amending K.S.A. 40-2,125 and repealing the existing section.
4

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

6 Section 1. K.S.A. 40-2,125 is hereby amended to read as follows: 40-
7 2,125. (a) If the commissioner determines after notice and opportunity for
8 a hearing that any person has engaged or is engaging in any act or practice
9 constituting a violation of any provision of Kansas insurance statutes or
10 any rule and regulation or order thereunder, the commissioner may in the
11 exercise of discretion, order any one or more of the following:

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

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

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

24 (b) If any person fails to file any report or other information with the
25 commissioner as required by statute or fails to respond to any proper
26 inquiry of the commissioner, the commissioner, after notice and
27 opportunity for hearing, may impose a civil penalty of up to \$1,000, for
28 each violation or act, along with an additional penalty of up to \$500 for
29 each week thereafter that such report or other information is not provided
30 to the commissioner.

31 (c) If the commissioner makes written findings of fact that there is a
32 situation involving an immediate danger to the public health, safety or
33 welfare or the public interest will be irreparably harmed by delay in
34 issuing an order under subsection (a)(3), the commissioner may issue an
35 emergency temporary cease and desist order. Such order, even when not an
36 order within the meaning of K.S.A. 77-502, and amendments thereto, shall

1 be subject to the same procedures as an emergency order issued under
 2 K.S.A. 77-536, and amendments thereto. Upon the entry of such an order,
 3 the commissioner shall promptly notify the person subject to the order
 4 that: (1) It has been entered; (2) the reasons therefor; and (3) that upon
 5 written request within 15 days after service of the order the matter will be
 6 set for a hearing which shall be conducted in accordance with the
 7 provisions of the Kansas administrative procedure act. If no hearing is
 8 requested and none is ordered by the commissioner, the order will remain
 9 in effect until it is modified or vacated by the commissioner. If a hearing is
 10 requested or ordered, the commissioner, after notice of and opportunity for
 11 hearing to the person subject to the order, shall by written findings of fact
 12 and conclusions of law vacate, modify or make permanent the order.

13 (d) For purposes of this section:

14 (1) "Person" means any individual, corporation, association,
 15 partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal
 16 benefit society and any other legal entity engaged in the business of
 17 insurance, rating organization, third party administrator, nonprofit dental
 18 service corporation, nonprofit medical and hospital service corporation,
 19 automobile club, premium financing company, health maintenance
 20 organization, insurance holding company, mortgage guaranty insurance
 21 company, risk retention or purchasing group, prepaid legal and dental
 22 service plan, captive insurance company, automobile self-insurer or
 23 reinsurance intermediary *and any other legal entity under the jurisdiction*
 24 *of the commissioner.* The term "person" ~~shall~~ does not include insurance
 25 agents and brokers as such terms are defined in K.S.A. 40-4902, and
 26 amendments thereto.

27 (2) "Commissioner" means the commissioner of insurance of this
 28 state.

29 Sec. 2. K.S.A. 40-2,125 is hereby repealed.

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

Kansas register