

As Amended by House Committee

Session of 2012

HOUSE BILL No. 2485

By Committee on Insurance

1-19

1 AN ACT concerning insurance; relating to antifraud plans; amending
2 K.S.A. 2011 Supp. 40-2,118 and repealing the existing section.

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

5 Section 1. K.S.A. 2011 Supp. 40-2,118 is hereby amended to read as
6 follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act"
7 means an act committed by any person who, knowingly and with intent to
8 defraud, presents, causes to be presented or prepares with knowledge or
9 belief that it will be presented to or by an insurer, purported insurer, broker
10 or any agent thereof, any written, *electronic or recorded* statement as part
11 of, or in support of, an application for the issuance of, or the rating of an
12 insurance policy for personal or commercial insurance, or a claim for
13 payment or other benefit pursuant to an insurance policy for commercial or
14 personal insurance which such person knows to contain materially false
15 information concerning any fact material thereto; or conceals, for the
16 purpose of misleading, information concerning any fact material thereto.

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

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

27 (d) (1) Each insurer ~~admitted to do business in Kansas shall have~~
28 ~~antifraud initiatives shall submit an antifraud plan~~ reasonably calculated to
29 detect fraudulent insurance acts. ~~Antifraud initiatives may include: fraud~~
30 ~~investigators, who may be insurer employees or independent contractors;~~
31 ~~or an~~ The antifraud plan shall be submitted to the commissioner no later
32 than ~~July 1, 2007~~ ~~January 1, 2013~~ **2014**, or six months after admission to
33 Kansas. Each insurer that submits an antifraud plan shall notify the
34 commissioner of any material change in the information contained in the
35 antifraud plan within 30 days after such change occurs. ~~Such insurer shall~~
36 ~~submit to the commissioner in writing the amended antifraud plan.~~

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

6 (2) Any antifraud plan, or any amendment thereof, submitted to the
7 commissioner for informational purposes only shall be confidential and
8 not be a public record and shall not be subject to discovery or subpoena in
9 a civil action unless following an in camera review, the court determines
10 that the antifraud plan is relevant and otherwise admissible under the rules
11 of evidence set forth in article 4 of chapter 60 of the Kansas Statutes
12 Annotated, and amendments thereto. The provisions of this paragraph shall
13 expire on July 1, 2016, unless the legislature reviews and reenacts this
14 provision pursuant to K.S.A. 45-229, and amendments thereto, prior to
15 July 1, 2016.

16 ~~(3) (A) On and after January 1, 2013, all applications for insurance~~
17 ~~and all written or electronic claim forms provided and required by an~~
18 ~~insurer or required by law as a condition of payment of a claim, shall~~
19 ~~contain a statement, permanently affixed to the application or claim form,~~
20 ~~that clearly states in substance, the following:~~

21 ~~"Knowingly providing false, incomplete or misleading information to~~
22 ~~an insurance company for the purpose of defrauding the company is a~~
23 ~~felony punishable by fines, imprisonment or both. In addition, the~~
24 ~~company may deny insurance benefits."~~

25 ~~(B) The lack of a statement required in this subsection does not~~
26 ~~constitute a defense in any criminal prosecution or in any civil action.~~

27 ~~(4) The warning required by this subsection shall not be required on~~
28 ~~forms relating to reinsurance.~~

29 (e) Except as otherwise specifically provided in subsection (a) of
30 K.S.A. 2011 Supp. 21-5812, and amendments thereto, and K.S.A. 44-
31 5,125, and amendments thereto, a fraudulent insurance act shall constitute
32 a severity level 6, nonperson felony if the amount involved is \$25,000 or
33 more; a severity level 7, nonperson felony if the amount is at least \$5,000
34 but less than \$25,000; a severity level 8, nonperson felony if the amount is
35 at least \$1,000 but less than \$5,000; and a class C nonperson misdemeanor
36 if the amount is less than \$1,000. Any combination of fraudulent acts as
37 defined in subsection (a) which occur in a period of six consecutive
38 months which involves \$25,000 or more shall have a presumptive sentence
39 of imprisonment regardless of its location on the sentencing grid block.

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

1 involving a fraudulent insurance act.

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

4 Sec. 2. K.S.A. 2011 Supp. 40-2,118 is hereby repealed.

5 Sec. 3. This act shall take effect and be in force from and after its
6 publication in the statute book.

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