

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2213

By Committee on Corrections and Juvenile Justice

2-8

1 AN ACT concerning insurance; relating to fraudulent insurance acts;
2 amount involved; amending K.S.A. 2018 Supp. 40-2,118 and repealing
3 the existing section; also repealing K.S.A. 2018 Supp. 40-2,118a.
4

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

6 Section 1. K.S.A. 2018 Supp. 40-2,118 is hereby amended to read as
7 follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act"
8 means an act committed by any person who, knowingly and with intent to
9 defraud, presents, causes to be presented or prepares with knowledge or
10 belief that it will be presented to or by an insurer, purported insurer, broker
11 or any agent thereof, any written, electronic, electronic impulse, facsimile,
12 magnetic, oral, or telephonic communication or statement as part of, or in
13 support of, an application for the issuance of, or the rating of an insurance
14 policy for personal or commercial insurance, or a claim for payment or
15 other benefit pursuant to an insurance policy for commercial or personal
16 insurance which such person knows to contain materially false information
17 concerning any fact material thereto; or conceals, for the purpose of
18 misleading, information concerning any fact material thereto.

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

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

29 (d) (1) Each insurer shall have antifraud initiatives reasonably
30 calculated to detect fraudulent insurance acts. Antifraud initiatives may
31 include fraud investigators, who may be insurer employees or independent
32 contractors and an antifraud plan submitted to the commissioner no later
33 than July 1, 2007. Each insurer that submits an antifraud plan shall notify
34 the commissioner of any material change in the information contained in
35 the antifraud plan within 30 days after such change occurs. Such insurer
36 shall 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 subsection (d)(2) unless the legislature reviews and reenacts the provisions
4 of subsection (d)(2) prior to such date.

5 (2) Any antifraud plan, or any amendment thereof, submitted to the
6 commissioner for informational purposes only shall be confidential and
7 not be a public record and shall not be subject to discovery or subpoena in
8 a civil action unless following an in camera review, the court determines
9 that the antifraud plan is relevant and otherwise admissible under the rules
10 of evidence set forth in article 4 of chapter 60 of the Kansas Statutes
11 Annotated, and amendments thereto. The provisions of this paragraph shall
12 expire on July 1, 2021, unless the legislature reviews and reenacts this
13 provision prior to July 1, 2021.

14 (e) Except as otherwise specifically provided in K.S.A. 2018 Supp.
15 21-5812(a), and amendments thereto, and K.S.A. 44-5,125, and
16 amendments thereto, a fraudulent insurance act shall constitute a severity
17 level 6, nonperson felony if the amount involved is \$25,000 or more; a
18 severity level 7, nonperson felony if the amount *involved* is at least \$5,000
19 but less than \$25,000; a severity level 8, nonperson felony if the amount
20 *involved* is at least \$1,000 but less than \$5,000; and a class C nonperson
21 misdemeanor if the amount *involved* is less than \$1,000. Any combination
22 of fraudulent acts as defined in subsection (a) which occur in a period of
23 six consecutive months which involves \$25,000 or more shall have a
24 presumptive sentence of imprisonment regardless of its location on the
25 sentencing grid block.

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

31 (g) *For the purposes of this section:*

32 (1) *"Amount involved" means the greater of: (A) The actual*
33 *pecuniary harm resulting from the fraudulent insurance act; (B) the*
34 *pecuniary harm that was intended to result from the fraudulent insurance*
35 *act; or (C) the intended pecuniary harm that would have been impossible*
36 *or unlikely to occur, such as in a government sting operation or a fraud in*
37 *which the claim for payment or other benefit pursuant to an insurance*
38 *policy exceeded the allowed value. The aggregate dollar amount of the*
39 **fraudulent claims submitted to the insurance company shall constitute**
40 *prima facie evidence of the amount of intended loss and is sufficient to*
41 *establish the aggregate amount involved in the fraudulent insurance act, if*
42 *not rebutted; and*

43 (2) *"pecuniary harm" means harm that is monetary or that otherwise*

1 *is readily measurable in money, and does not include emotional distress,*
2 *harm to reputation or other non-economic harm.*

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

5 Sec. 2. K.S.A. 2018 Supp. 40-2,118 and 40-2,118a are hereby
6 repealed.

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