

HOUSE BILL No. 2075

By Committee on Insurance

1-24

1 AN ACT concerning the insurance department's criminal anti-fraud
2 division; extending the exception from disclosure of records under the
3 open records act; repealing K.S.A. 2010 Supp. 40-2,118
4

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

6 Section 1. (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,
10 broker or any agent thereof, any written statement as part of, or in support
11 of, an application for the issuance of, or the rating of an insurance policy
12 for personal or commercial insurance, or a claim for payment or other
13 benefit pursuant to an insurance policy for commercial or personal
14 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 shall have antifraud initiatives reasonably
28 calculated to detect fraudulent insurance acts. Antifraud initiatives may
29 include: fraud investigators, who may be insurer employees or
30 independent contractors; or an antifraud plan submitted to the
31 commissioner no later than July 1, 2007. Each insurer that submits an
32 antifraud plan shall notify the commissioner of any material change in the
33 information contained in the antifraud plan within 30 days after such
34 change occurs. Such insurer shall submit to the commissioner in writing
35 the amended antifraud plan.

36 The requirement for submitting any antifraud plan, or any amendment

1 thereof, to the commissioner shall expire on the date specified in
2 paragraph (2) of this subsection unless the legislature reviews and
3 reenacts the provisions of paragraph (2) pursuant to K.S.A. 45-229 and
4 amendments thereto.

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
8 in a civil action unless following an in camera review, the court
9 determines that the antifraud plan is relevant and otherwise admissible
10 under the rules of evidence set forth in article 4, chapter 60 of the Kansas
11 Statutes Annotated, and amendments thereto. The provisions of this
12 paragraph shall expire on July 1, 2016, unless the legislature reviews and
13 reenacts this provision pursuant to K.S.A. 45-229, and amendments
14 thereto, prior to July 1, 2016.

15 (e) Except as otherwise specifically provided in K.S.A. 21-3718 and
16 amendments thereto and K.S.A. 44-5,125 and amendments thereto, a
17 fraudulent insurance act shall constitute a severity level 6, nonperson
18 felony if the amount involved is \$25,000 or more; a severity level 7,
19 nonperson felony if the amount is at least \$5,000 but less than \$25,000; a
20 severity level 8, nonperson felony if the amount is at least \$1,000 but less
21 than \$5,000; and a class C nonperson misdemeanor if the amount is less
22 than \$1,000. Any combination of fraudulent acts as defined in subsection
23 (a) which occur in a period of six consecutive months which involves
24 \$25,000 or more shall have a presumptive sentence of imprisonment
25 regardless of its location on the 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) This act shall apply to all insurance applications, ratings, claims
32 and other benefits made pursuant to any insurance policy.

33 Sec. 2. K.S.A. 2010 Supp. 40-2,118 is hereby repealed.

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