

As Amended by House Committee

Session of 2019

SENATE BILL No. 28

By Committee on Financial Institutions and Insurance

1-22

1 AN ACT concerning insurance; relating to ~~risk-based capital instructions;~~
2 ~~effective date~~ **fraudulent insurance acts; amount involved**; amending
3 K.S.A. 2018 Supp. ~~40-2e01~~ **40-2,118** and repealing the existing
4 section; **also repealing K.S.A. 2018 Supp. 40-2,118a.**

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

7 Section 1. ~~K.S.A. 2018 Supp. 40-2e01 is hereby amended to read as~~
8 ~~follows: 40-2e01. As used in this act:~~

9 ~~(a) "Adjusted RBC report" means an RBC report which has been~~
10 ~~adjusted by the commissioner in accordance with K.S.A. 40-2e04, and~~
11 ~~amendments thereto.~~

12 ~~(b) "Corrective order" means an order issued by the commissioner~~
13 ~~specifying corrective actions which the commissioner has determined are~~
14 ~~required to address an RBC level event.~~

15 ~~(c) "Domestic insurer" means any insurance company or risk~~
16 ~~retention group which is licensed and organized in this state.~~

17 ~~(d) "Foreign insurer" means any insurance company or risk retention~~
18 ~~group not domiciled in this state which is licensed or registered to do~~
19 ~~business in this state pursuant to article 41 of chapter 40 of the Kansas~~
20 ~~Statutes Annotated or K.S.A. 40-209, and amendments thereto.~~

21 ~~(e) "NAIC" means the national association of insurance~~
22 ~~commissioners.~~

23 ~~(f) "Life and health insurer" means any insurance company licensed~~
24 ~~under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated, and~~
25 ~~amendments thereto, or a licensed property and casualty insurer writing~~
26 ~~only accident and health insurance.~~

27 ~~(g) "Property and casualty insurer" means any insurance company~~
28 ~~licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the~~
29 ~~Kansas Statutes Annotated, and amendments thereto, but shall not include~~
30 ~~monoline mortgage guaranty insurers, financial guaranty insurers and title~~
31 ~~insurers.~~

32 ~~(h) "Negative trend" means, with respect to a life and health insurer, a~~
33 ~~negative trend over a period of time, as determined in accordance with the~~
34 ~~"trend test calculation" included in the RBC instructions defined in~~
35 ~~subsection (j).~~

36 ~~(i) "RBC" means risk-based capital.~~

1 ~~(j) "RBC instructions" means the risk-based capital instructions~~
2 ~~promulgated by the NAIC, which are in effect on December 31, 2017~~
3 ~~2018, or any later version promulgated by the NAIC as may be adopted by~~
4 ~~the commissioner under K.S.A. 2018 Supp. 40-2e29, and amendments~~
5 ~~thereto.~~

6 ~~(k) "RBC level" means an insurer's company action level RBC,~~
7 ~~regulatory action level RBC, authorized control level RBC, or mandatory~~
8 ~~control level RBC where:~~

9 ~~(1) "Company action level RBC" means, with respect to any insurer,~~
10 ~~the product of 2.0 and its authorized control level RBC;~~

11 ~~(2) "regulatory action level RBC" means the product of 1.5 and its~~
12 ~~authorized control level RBC;~~

13 ~~(3) "authorized control level RBC" means the number determined~~
14 ~~under the risk-based capital formula in accordance with the RBC~~
15 ~~instructions; and~~

16 ~~(4) "mandatory control level RBC" means the product of 0.70 and the~~
17 ~~authorized control level RBC.~~

18 ~~(l) "RBC plan" means a comprehensive financial plan containing the~~
19 ~~elements specified in K.S.A. 40-2e06, and amendments thereto. If the~~
20 ~~commissioner rejects the RBC plan, and it is revised by the insurer, with or~~
21 ~~without the commissioner's recommendation, the plan shall be called the~~
22 ~~"revised RBC plan."~~

23 ~~(m) "RBC report" means the report required by K.S.A. 40-2e02, and~~
24 ~~amendments thereto;~~

25 ~~(n) "Total adjusted capital" means the sum of:~~

26 ~~(1) An insurer's capital and surplus or surplus only if a mutual~~
27 ~~insurer; and~~

28 ~~(2) such other items, if any, as the RBC instructions may provide.~~

29 ~~(o) "Commissioner" means the commissioner of insurance.~~

30 **Section 1. K.S.A. 2018 Supp. 40-2,118 is hereby amended to read**
31 **as follows: 40-2,118. (a) For purposes of this act a "fraudulent**
32 **insurance act" means an act committed by any person who, knowingly**
33 **and with intent to defraud, presents, causes to be presented or**
34 **prepares with knowledge or belief that it will be presented to or by an**
35 **insurer, purported insurer, broker or any agent thereof, any written,**
36 **electronic, electronic impulse, facsimile, magnetic, oral, or telephonic**
37 **communication or statement as part of, or in support of, an**
38 **application for the issuance of, or the rating of an insurance policy for**
39 **personal or commercial insurance, or a claim for payment or other**
40 **benefit pursuant to an insurance policy for commercial or personal**
41 **insurance which such person knows to contain materially false**
42 **information concerning any fact material thereto; or conceals, for the**
43 **purpose of misleading, information concerning any fact material**

1 thereto.

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

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

13 (d) (1) Each insurer shall have antifraud initiatives reasonably
14 calculated to detect fraudulent insurance acts. Antifraud initiatives
15 may include fraud investigators, who may be insurer employees or
16 independent contractors and an antifraud plan submitted to the
17 commissioner no later than July 1, 2007. Each insurer that submits an
18 antifraud plan shall notify the commissioner of any material change in
19 the information contained in the antifraud plan within 30 days after
20 such change occurs. Such insurer shall submit to the commissioner in
21 writing the amended antifraud plan.

22 The requirement for submitting any antifraud plan, or any
23 amendment thereof, to the commissioner shall expire on the date
24 specified in subsection (d)(2) unless the legislature reviews and
25 reenacts the provisions of subsection (d)(2) prior to such date.

26 (2) Any antifraud plan, or any amendment thereof, submitted to
27 the commissioner for informational purposes only shall be confidential
28 and not be a public record and shall not be subject to discovery or
29 subpoena in a civil action unless following an *in camera* review, the
30 court determines that the antifraud plan is relevant and otherwise
31 admissible under the rules of evidence set forth in article 4 of chapter
32 60 of the Kansas Statutes Annotated, and amendments thereto. The
33 provisions of this paragraph shall expire on July 1, 2021, unless the
34 legislature reviews and reenacts this provision prior to July 1, 2021.

35 (e) Except as otherwise specifically provided in K.S.A. 2018 Supp.
36 21-5812(a), and amendments thereto, and K.S.A. 44-5,125, and
37 amendments thereto, a fraudulent insurance act shall constitute a
38 severity level 6, nonperson felony if the amount involved is \$25,000 or
39 more; a severity level 7, nonperson felony if the amount *involved* is
40 at least \$5,000 but less than \$25,000; a severity level 8, nonperson felony
41 if the amount *involved* is at least \$1,000 but less than \$5,000; and a
42 class C nonperson misdemeanor if the amount *involved* is less than
43 \$1,000. Any combination of fraudulent acts as defined in subsection

1 (a) which occur in a period of six consecutive months which involves
2 \$25,000 or more shall have a presumptive sentence of imprisonment
3 regardless of its location on the sentencing grid block.

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

9 (g) For the purposes of this section:

10 (1) "Amount involved" means the greater of: (A) The actual
11 pecuniary harm resulting from the fraudulent insurance act; (B) the
12 pecuniary harm that was intended to result from the fraudulent insurance
13 act; or (C) the intended pecuniary harm that would have been impossible
14 or unlikely to occur, such as in a government sting operation or a fraud in
15 which the claim for payment or other benefit pursuant to an insurance
16 policy exceeded the allowed value. The aggregate dollar amount of the
17 fraudulent claims submitted to the insurance company shall constitute
18 prima facie evidence of the amount of intended loss and is sufficient to
19 establish the aggregate amount involved in the fraudulent insurance act, if
20 not rebutted; and

21 (2) "pecuniary harm" means harm that is monetary or that otherwise
22 is readily measurable in money, and does not include emotional distress,
23 harm to reputation or other non-economic harm.

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

26 Sec. 2. K.S.A. 2018 Supp. ~~40-2e01~~ is 40-2,118 and 40-2,118a are
27 hereby repealed.

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