

## 2012 Kansas Statutes

### **44-5,120. Fraudulent or abusive acts or practices; defined; powers, duties and functions of director of workers compensation and commissioner of insurance; application of section; administrative investigation and enforcement; hearings; costs; cease and desist orders; civil penalties; repayments, interest; review referrals, immunity.**

(a) The director of workers compensation is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are not licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims or benefits thereunder. The commissioner of insurance is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims thereunder.

(b) This section applies to:

- (1) Persons claiming benefits under the workers compensation act;
- (2) employers subject to the requirements of the workers compensation act;
- (3) insurance companies including group-funded self-insurance plans covering Kansas employers and employees;
- (4) any person, corporation, business, health care facility that is organized either for profit or not-for-profit and that renders medical care, treatment or services in accordance with the provisions of the workers compensation act to an injured employee who is covered thereunder; and
- (5) attorneys and other representatives of employers, employees, insurers or other entities that are subject to the workers compensation act.

(c) The commissioner of insurance may examine the workers compensation records of insurance companies or self-insurers as necessary to ensure compliance with the workers compensation act. Each insurance company providing workers compensation insurance in Kansas, the company's agents, and those entities that the company has contracted to provide review services or to monitor services and practices under the workers compensation act shall cooperate with the commissioner of insurance, and shall make available to the commissioner any records or other necessary information requested by the commissioner. The commissioner of insurance shall conduct an examination authorized by this subsection in accordance with the provisions of K.S.A. 40-222 and 40-223, and amendments thereto.

(d) Fraudulent or abusive acts or practices for purposes of the workers compensation act include, willfully, knowingly or intentionally:

- (1) Collecting from an employee, through a deduction from wages or a subsequent fee, any premium or other fee paid by the employer to obtain workers compensation insurance coverage;
- (2) misrepresenting to an insurance company or the insurance department, the classification of employees of an employer, or the location, number of employees, or true identity of the employer with the intent to lessen or reduce the premium otherwise chargeable for workers compensation insurance coverage;
- (3) lending money to the claimant during the pendency of the workers compensation claim by an attorney representing the claimant, but this provision shall not prohibit the attorney from assisting the claimant in obtaining financial assistance from another source, except that (A) the attorney shall not have a financial interest, directly or indirectly, in the source from which the loan or other financial assistance is secured and (B) the attorney shall not be personally liable in any way for the credit extended to the claimant;
- (4) obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by:
  - (A) Making a false or misleading statement;
  - (B) misrepresenting or concealing a material fact;
  - (C) fabricating, altering, concealing or destroying a document; or
  - (D) conspiring to commit an act specified by clauses (A), (B) or (C) of this subsection (d)(4);
- (5) bringing, prosecuting or defending an action for compensation under the workers compensation act or requesting initiation of an administrative violation proceeding that, in either case, has no basis in fact or is not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;
- (6) breaching a provision of an agreement approved by the director;
- (7) withholding amounts not authorized by the director from the employee's or legal beneficiary's weekly compensation payment or from advances from any such payment;
- (8) entering into a settlement or agreement without the knowledge and consent of the employee or legal beneficiary;
- (9) taking a fee or withholding expenses in excess of the amounts authorized by the director;
- (10) refusing or failing to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order or award;
- (11) misrepresenting the provisions of the workers compensation act to an employee, an employer, a health care provider or a legal beneficiary;
- (12) instructing employers not to file required documents with the director;
- (13) instructing or encouraging employers to violate the employee's right to medical benefits under the workers compensation act;
- (14) failing to tender promptly full death benefits if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;
- (15) failing to confirm medical compensation benefits coverage to any person or facility providing medical treatment to a claimant if a clear and legitimate dispute does not exist as to the liability of the insurance carrier, self-insured employer or group-funded self-insurance plan;
- (16) failing to initiate or reinstate compensation when due if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;
- (17) misrepresenting the reason for not paying compensation or terminating or reducing the payment of compensation;
- (18) refusing to pay compensation as and when the compensation is due;
- (19) refusing to pay any order awarding compensation;
- (20) refusing to timely file required reports or records under the workers compensation act, except as provided in K.S.A. 44-557, and amendments thereto; and

(21) for a health care provider to submit a charge for health care that was not furnished.

(e) Whenever the director or the commissioner of insurance has reason to believe that any person has engaged or is engaging in any fraudulent or abusive act or practice in connection with the conduct of Kansas workers compensation insurance, claims, benefits or services in this state, that such fraudulent or abusive act or practice is not subject to possible proceedings under K.S.A. 40-2401 through 40-2421, and amendments thereto, by the commissioner of insurance, and that a proceeding by the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, with respect thereto would be in the interest of the public, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue and serve upon such person a summary order or statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act. Complaints filed with the director or the commissioner of insurance may be dismissed by the director or the commissioner of insurance on their own initiative, and shall be dismissed upon the written request of the complainant, if the director or commissioner of insurance has not conducted a hearing or taken other administrative action dismissing the complaint within 180 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this section shall constitute final action by the director or commissioner of insurance which shall be deemed to exhaust all administrative remedies under K.S.A. 44-5,120, and amendments thereto, for the purpose of allowing subsequent filing of the matter in court by the complainant. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review.

(f) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person charged has engaged in any fraudulent or abusive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section may be assessed against the person or persons found to have engaged in such acts. In an appropriate case to reimburse costs incurred, such costs may be awarded to a complainant. As used in this subsection, "costs" include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order or summary order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:

- (1) Payment of a monetary penalty of not more than \$2,000 for each and every act constituting the fraudulent or abusive act or practice, but not exceeding an aggregate penalty of \$20,000 in a one-year period;
- (2) redress of the injury by requiring the refund of any premiums paid by and requiring the payment of any moneys withheld from, any employee, employer, insurance company or other person or entity adversely affected by the act constituting a fraudulent or abusive act or practice;
- (3) repayment of an amount equal to the total amount that the person received as benefits or any other payment under the workers compensation act and any amount that the person otherwise benefited as a result of an act constituting a fraudulent or abusive act or practice, with interest thereon determined so that such total amount, plus any accrued interest thereon, bears interest, from the date of the payment of benefits or other such payment or the date the person was benefited, at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204, and amendments thereto, per month or fraction of a month until repayment.

(h) After the expiration of the time allowed for filing a petition for review of an order issued under this section, if no such petition has been duly filed within such time, the director at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the director's opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

(i) Upon the order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, any person who violates a cease and desist order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, issued under this section may be subject, at the discretion of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, to a monetary penalty of not more than \$10,000 for each and every act or violation, but not exceeding an aggregate penalty of \$50,000 for any six-month period in addition to any penalty imposed pursuant to subsection (g).

(j) Any civil fine imposed under this section shall be subject to review in accordance with the Kansas judicial review act in the district court in Shawnee county.

(k) All moneys received under this section for costs assessed, which are not awarded to a complainant, or monetary penalties imposed shall be deposited in the state treasury and credited to the workers compensation fee fund.

(l) Any person who refers a possibly fraudulent or abusive practice to any state or governmental investigative agency, shall be immune from civil or criminal liability arising from the supply or release of such referral as long as such referral is made in good faith with the belief that a fraudulent or abusive practice has, is or will occur and said referral is not made by the person or persons who are in violation of the workers compensation act in order to avoid criminal prosecution or administrative hearings.

**History:** L. 1993, ch. 286, § 1; L. 1997, ch. 125, § 18; L. 1998, ch. 114, § 7; L. 2000, ch. 160, § 22; L. 2010, ch. 17, § 73; July 1.