

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2075

BY: STOTTLEMYRE

AS INTRODUCED

AN ACT RELATING TO MOTOR VEHICLE INSURANCE; AMENDING 15 O.S. 1991, SECTION 955, WHICH RELATES TO THE AFTERMARKET CRASH PARTS REGULATION ACT; PROHIBITING INSURERS FROM SPECIFYING USE OF CERTAIN MOTOR VEHICLE REPAIR PARTS WITHOUT THE WRITTEN CONSENT OF THE CONSUMER; REQUIRING THE INSURER TO COMPLY WITH CERTAIN PROVISIONS OF LAW; AMENDING 36 O.S. 1991, SECTION 1257, WHICH RELATES TO MOTOR VEHICLE DAMAGE CLAIMS; PROVIDING FOR SELECTION OF REPAIR PARTS BY THE CLAIMANT; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 15 O.S. 1991, Section 955, is amended to read as follows:

Section 955. No insurer shall specify the use of non-original equipment manufacturer aftermarket crash parts in the repair of an insured's motor vehicle, nor shall a repair facility or installer use non-original equipment manufacturer aftermarket crash parts to repair a vehicle, unless the consumer ~~is advised~~ consents in writing to the use of such parts, and the insurer complies with the provisions of Section 1257 of Title 36 of the Oklahoma Statutes. In

all instances where non-original equipment manufacturer aftermarket crash parts are intended for use by an insurer:

1. the written estimate shall clearly identify each such part;
and

2. a disclosure document containing substantially the following information in ten-point type or larger type shall appear on or be attached to the insured's copy of the estimate: "This estimate has been prepared based on the use of crash parts supplied by a source other than the manufacturer of your motor vehicle. Warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle."

SECTION 2. AMENDATORY 36 O.S. 1991, Section 1257, is amended to read as follows:

Section 1257. A. If an insurance policy provides for the adjustment and settlement of first party motor vehicle total losses, on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods shall apply:

1. An insurer may elect to offer a replacement motor vehicle which is a specific comparable motor vehicle available to the insured, with all applicable taxes, license fees, and other fees incident to the transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof shall be documented in the claim file.

2. An insured may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle, including all applicable taxes, license fees and other fees incident to a transfer of evidence of ownership, or a comparable motor vehicle. Such cost may be determined by:

- a. The cost of a comparable motor vehicle in the local market area when a comparable motor vehicle is available in the local market area; or
- b. One of two or more quotations obtained by an insurer from two or more qualified dealers located within the local market area when a comparable motor vehicle is not available in the local market area; or
- c. The cost of a comparable motor vehicle as quoted in the latest edition of the National Automobile Dealers Association Official Used Car Guide.

B. If a first party motor vehicle total loss is settled on a basis which deviates from the methods described in subsection A of this section, the deviation shall be supported by documentation giving particulars of the condition of the motor vehicle. Any deductions from such cost, including, but not limited to, deduction for salvage, shall be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to a first party claimant.

C. If liability for motor vehicle damages is reasonably clear, insurers shall not recommend that third party claimants make claims pursuant to the third party claimants' own policies solely to avoid paying claims pursuant to such insurer's insurance policy or insurance contract.

D. Insurers shall not require a claimant to travel unreasonably either to inspect a replacement motor vehicle, obtain a repair estimate or have the motor vehicle repaired at a specific repair shop.

E. Insurers shall, upon the request of a claimant, include the deductible of a first party claimant, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with a first party claimant, unless the deductible amount has

been otherwise recovered. No deduction for expenses shall be made from a deductible recovery unless an outside attorney is retained to collect such recovery. The deduction shall then be made for only a pro rata share of the allocated loss adjustment expense.

F. If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it reasonably may be expected that the damage can be repaired satisfactorily. An insurer shall give a copy of an estimate to a claimant and may furnish to the claimant the names of one or more conveniently located repair shops, if requested by the claimant.

G. If an amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

H. If an insurer elects to repair a damaged motor vehicle and designates a specific repair shop for motor vehicle repairs, the insurer shall cause the damaged motor vehicle to be restored to its condition prior to the loss at no additional cost to a claimant other than as stated in the policy and within a reasonable period of time. The claimant shall also be furnished an itemized statement of repair at the time of acceptance of the repaired motor vehicle.

I. An insurer shall not use as a basis for cash settlement with a first party claimant an amount which is less than the amount which an insurer would pay if repairs were made, other than in total loss situations, unless such amount is agreed to by the insured.

J. An insurer shall not force a claimant to execute a full settlement release in order to settle a property damage claim involving a personal injury.

K. As used in this section, "total loss" means that the vehicle repair costs plus the salvage value of the vehicle meets or exceeds

the actual cash value of the motor vehicle prior to the loss, as provided in used automobile dealer guidebooks.

L. An insurer shall allow the claimant to make the determination of whether new original equipment parts, aftermarket crash parts as defined by Section 953 of Title 15 of the Oklahoma Statutes, or used parts shall be used to repair the damaged vehicle, at no additional cost to the claimant. Regardless of which type of parts the claimant selects, the insurer shall cause the damaged motor vehicle to be restored to its condition prior to the loss. The provisions of this subsection shall apply to all repair situations provided for in this section, whether the insurer elects to repair the damaged vehicle pursuant to subsection H of this section or elects to allow the claimant to choose where the damaged vehicle shall be repaired.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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