

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2668

By: Staggs

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2001, Section 941, which relates to motor vehicle insurance policies; prohibiting certain acts in relation to motor vehicle insurance policies; prohibiting placement of certain provision in motor vehicle insurance policies; requiring certain provision in motor vehicle insurance policies; amending 36 O.S. 2001, Section 1250.8, as amended by Section 1, Chapter 358, O.S.L. 2003 (36 O.S. Supp. 2003, Section 1250.8), which relates to the Unfair Claims Settlement Practices Act; expanding scope of procedures relating to adjustment and settlement of motor vehicle losses; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 941, is amended to read as follows:

Section 941. A. No insurance carrier who issues motor vehicle insurance policies in this state shall assign driving record points, cancel, refuse to issue or renew, or charge a higher premium rate for any motor vehicle liability or collision insurance policy for the reason that the insured has been involved in a motor vehicle collision and was not at fault.

B. No insurance carrier who issues motor vehicle insurance policies in this state shall cancel, refuse to issue or renew, or charge a higher premium for any motor vehicle liability or collision insurance policy for the reason that the insured had lower liability limits with a previous insurer. This prohibition includes using prior limits for company or tier placement.

C. This section shall not apply to an insured who has been convicted of:

1. Homicide or assault arising out of the operation of any motor vehicle; or

2. A violation of Section 11-902 or 761 of Title 47 of the Oklahoma Statutes as being impaired by or under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in the Uniform Controlled Dangerous Substances Act.

~~C.~~ D. The Insurance Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance business in this state of any insurance carrier violating the provisions of this section or may censure the insurer or impose a fine.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 941.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

No motor vehicle liability insurance policy issued or delivered in this state shall contain a provision that lowers the limits for bodily injury or property damage in the event that the insured motor vehicle is involved in an accident while it is being driven by a driver other than the named insured.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 941.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

Every motor vehicle liability insurance policy approved by the Insurance Commissioner shall include a provision that clearly indicates in substance that the financial responsibility limits of another state or province shall be met if so required by the other state and if the financial responsibility limits of the other state or province are higher than those required by the state where the motor vehicle is principally garaged.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1241.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

Each property and casualty insurance policy approved by the Insurance Commissioner shall contain a provision describing the process for premium refund if the insured cancels the policy before the end of the policy period as defined in the policy. The provision is to be included in the policy, or by rider or endorsement attached to the policy.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1241.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

No insurer that issues any type of property or casualty insurance policy in this state shall increase premium rates, cancel a policy, or refuse to issue or renew a policy on the basis of a policyholder inquiring about making a claim or requesting information about a possible claim, if the policyholder does not in fact submit a claim.

SECTION 6. AMENDATORY 36 O.S. 2001, Section 1250.8, as amended by Section 1, Chapter 358, O.S.L. 2003 (36 O.S. Supp. 2003, Section 1250.8), is amended to read as follows:

Section 1250.8 A. If an insurance policy or insurance contract 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 to the insured other than any deductible

provided in the policy. The offer and any rejection thereof shall be documented in the claim file; or

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,
- 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 or monthly edition of any other nationally recognized published guidebook.

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. An insurer or its representative shall not require a claimant to obtain motor vehicle repairs at a specific repair facility. An insurer or its representative shall not require a claimant to obtain motor vehicle glass repair or replacement at a specific motor vehicle glass repair or replacement facility. An insurer shall fully and promptly pay for the cost of the motor vehicle repair services or products, less any applicable deductible

amount payable according to the terms of the policy. The claimant shall be furnished an itemized priced statement of repairs by the repair facility at the time of acceptance of the repaired motor vehicle. Unless a cash settlement is made, if a claimant selects a motor vehicle repair or motor vehicle glass repair or replacement facility, the insurer shall provide payment to the facility or claimant based on a competitive price, as established by that insurer through market surveys or by the insured through competitive bids at the insured's option, to determine a fair and reasonable market price for similar services. Reasonable deviation from this market price is allowed based on the facts in each case.

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. All payment or satisfaction of a claim for a motor vehicle which has been transferred by title to the insurer shall be paid by check or draft, payable on demand.

L. In the event of payment of a total loss to a third party claimant, the insurer shall include any registered lienholder as copayee to the extent of the lienholder's interest.

M. 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.

SECTION 7. This act shall become effective November 1, 2004.

49-2-8375 SD 02/06/04