STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2101

By: Paulk and Lindley of the House

and

Helton and Leftwich (Debbe) of the Senate

COMMITTEE SUBSTITUTE

[insurance - amending 36 O.S. 2001, Section 1250.8 - the Unfair Claims Settlement Practices Act - effective date]

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

SECTION 1. 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. <u>If an insurer accepts liability for a claim, the insurer is responsible for wrecker and storage fees for the total loss vehicle or a pro rata share of the wrecker and storage fees for the total loss vehicle if the loss limits of the insurance policy have been exceeded. An insurer shall pay wrecker and storage fees for the total loss vehicle or include the licensed wrecker service as a copayee on the payment for the total loss vehicle, except when:</u>

<u>1. A receipt from the licensed wrecker service indicating full payment has been received by the licensed wrecker service is in possession of the insurer or the agent of the insurer; or</u>

<u>2. The wrecker service fails to provide notice by mail to an insurer within seven (7) business days of receipt of information</u>

confirming the insurer of an obvious total loss vehicle. In order to determine the identity of the insurer of an obvious total loss vehicle, the wrecker service shall, within three (3) business days of the tow date or, in the case of a vehicle with a missing vehicle identification number (VIN), when the vehicle is identified, request the Oklahoma Tax Commission or other appropriate motor license agent to furnish the name of the insurer. The wrecker service shall also be allowed access to pertinent records of the Oklahoma Tax Commission and law enforcement records of accident reports for the purpose of determining such information. Inspecting, photographing or inquiring about the claimant's vehicle by the insurer at the wrecker service within seven (7) business days of the tow date shall serve as sufficient notice by the wrecker service as required by this paragraph. For the purposes of this paragraph, "obvious total loss" means that the vehicle is a total burnout or has sufficient damage such that a reasonable and prudent layperson could expect the vehicle to be deemed a total loss.

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 2. This act shall become effective November 1, 2004.

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