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THE STATE SENATE
Thursday, February 20, 2003

Senate Bill No. 522
As Amended

SENATE BILL NO. 522 - By: ROBINSON of the Senate and COX of the House.

An Act relating to insurance; amending 36 O.S. 2001, Sections 348.1, as amended by Section 4, Chapter 307, O.S.L. 2002, 1250.7 and 1250.8 (36 O.S. Supp. 2002, Section 348.1), which relate to fees, licenses, and certain claims; adding certain filing to fee requirements; prohibiting surcharge on certain policies; prohibiting certain actions on specified policies under certain circumstances; providing exceptions; requiring certain policies to contain certain provisions; adding type of disaster to certain deadline extension; providing for certain payment to specified parties; requiring certain information on certain forms; 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 348.1, as amended by Section 4, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2002, Section 348.1), is amended to read as follows:

Section 348.1 A. The Insurance Commissioner shall collect the following fees and licenses for the Board and the Property and Casualty Division:

- 1. Rating organizations, application fee
for issuance of license..... \$200.00
- 2. Miscellaneous:
 - a. Certificate of Insurance Commissioner,

1 under seal..... .\$20.00

2 b. Upon each transaction of filing of
3 documents required pursuant to the
4 provisions of ~~Section~~ Sections 3610 and 6614 of this
5 title:

6 (1) For an individual insurer..... \$50.00

7 (2) For an approved rating or advisory
8 organization:

9 (a) Basic fee..... \$50.00

10 (b) Additional fee for each
11 member or subscriber insurer..... \$10.00,
12 not to exceed..... \$500.00

13 3. For each rate, loss cost and rule filing request pursuant to
14 the provisions of Sections 902.1, 903 et seq., and 981 et seq. of
15 this title:

16 a. For an individual insurer.....\$100.00

17 b. For an approved rating or advisory
18 organization:

19 (1) Basic fee.....\$100.00

20 (2) Additional fee for each member
21 or subscriber insurer.....\$10.00,
22 not to exceed.....\$500.00.

1 B. All fees and licenses collected by the Insurance
2 Commissioner as provided in this section shall be paid into the
3 State Treasury on a weekly basis to the credit of the Insurance
4 Commissioner's Revolving Fund for the purpose of carrying out and
5 enforcing the provisions of Article 9 of the Insurance Code.

6 C. The fees, licenses, and taxes imposed by the Board upon
7 persons, firms, associations, or corporations licensed pursuant to
8 this section shall be payment in full with respect thereto of and in
9 lieu of all demands for any and all state, county, district, and
10 municipal license fees, license taxes, business privilege taxes,
11 business privilege fees, and charges of every kind now or hereafter
12 imposed upon all such persons, firms, associations, or corporations.
13 This subsection shall not affect other fees, licenses and taxes
14 imposed by the Insurance Code.

15 D. Any costs incurred by the Board or the Commissioner in the
16 process of review and analysis of a filing shall be assessed against
17 the company or organization making the filing.

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

21 A. No property and casualty insurer shall impose a surcharge
22 against a motor vehicle policy where the total cost of the claim
23 does not exceed **the amount of premium paid.** No property and

1 casualty insurer shall cancel, refuse to renew or increase the
2 premiums of motor vehicle policies where such claim has been filed.

3 B. The provisions of this section shall not be construed to
4 prevent cancellation, nonrenewal or increase in premium of a motor
5 vehicle policy for:

6 1. Nonpayment of premium;

7 2. Discovery of fraud or material misrepresentation in the
8 procurement of the insurance or with respect to any claims submitted
9 thereunder;

10 3. Discovery of willful or reckless acts or omissions on the
11 part of the named insured which increases any hazard insured
12 against;

13 4. A change in the risk which substantially increases any
14 hazard insured against after insurance coverage has been issued or
15 renewed;

16 5. Violation of any local laws or regulations that
17 substantially increases any hazard insured against;

18 6. A determination by the Insurance Commissioner that the
19 continuation of the policy would place the insurer in violation of
20 the insurance laws of this state; or

21 7. Conviction of the named insured of a crime having as one of
22 its necessary elements an act increasing any hazard insured against.

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

4 Each policy or contract of property insurance shall contain in
5 substance the following provision:

6 "Appraisal. In case the insured and this company shall fail to
7 agree as to the actual cash value or the amount of loss, then, upon
8 the written demand of either, each shall select a competent and
9 disinterested appraiser and notify the other of the appraiser
10 selected within twenty (20) days of such demand. The appraisers
11 shall first select a competent and disinterested umpire, and failing
12 for fifteen (15) days to agree upon such umpire, then, upon request
13 of the insured or this company, after notice of hearing to the
14 nonrequesting party by certified mail, such umpire shall be selected
15 by a judge of the district court in the county where the loss
16 occurred. The appraisers shall then appraise the loss, stating
17 separately actual cash value and loss to each item and, upon failure
18 to agree, shall submit their differences only to the umpire. An
19 award in writing, so itemized, of any two when filed with this
20 company shall determine the amount of actual cash value and loss.
21 Each appraiser shall be paid by the selecting party, and the
22 expenses of appraisal and umpire shall be paid by the parties
23 equally."

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1241.4 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

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

11 SECTION 5. AMENDATORY 36 O.S. 2001, Section 1250.7, is
12 amended to read as follows:

13 Section 1250.7 A. Within forty-five (45) days after receipt by
14 a property and casualty insurer of properly executed proofs of loss,
15 the first party claimant shall be advised of the acceptance or
16 denial of the claim by the insurer, or if further investigation is
17 necessary. No property and casualty insurer shall deny a claim
18 because of a specific policy provision, condition, or exclusion
19 unless reference to such provision, condition, or exclusion is
20 included in the denial. A denial shall be given to any claimant in
21 writing, and the claim file of the property and casualty insurer
22 shall contain a copy of the denial. If there is a reasonable basis
23 supported by specific information available for review by the

1 Commissioner that the first party claimant has fraudulently caused
2 or contributed to the loss, a property and casualty insurer shall be
3 relieved from the requirements of this subsection. In the event of
4 a weather-related catastrophe ~~or,~~ a major natural disaster or a man-
5 made disaster, as declared by the Governor, the Insurance
6 Commissioner may extend the deadline imposed under this subsection
7 an additional twenty (20) days.

8 B. If a claim is denied for reasons other than those described
9 in subsection A of this section, and is made by any other means than
10 writing, an appropriate notation shall be made in the claim file of
11 the property and casualty insurer until such time as a written
12 confirmation can be made.

13 C. Every property and casualty insurer shall complete
14 investigation of a claim within sixty (60) days after notification
15 of proof of loss unless such investigation cannot reasonably be
16 completed within such time. If such investigation cannot be
17 completed, or if a property and casualty insurer needs more time to
18 determine whether a claim should be accepted or denied, it shall so
19 notify the claimant within sixty (60) days after receipt of the
20 proofs of loss, giving reasons why more time is needed. If the
21 investigation remains incomplete, a property and casualty insurer
22 shall, within sixty (60) days from the date of the initial
23 notification, send to such claimant a letter setting forth the

1 reasons additional time is needed for investigation. Except for an
2 investigation of possible fraud or arson which is supported by
3 specific information giving a reasonable basis for the
4 investigation, the time for investigation shall not exceed one
5 hundred twenty (120) days after receipt of proof of loss. Provided,
6 in the event of a weather-related catastrophe, ~~or~~ a major natural
7 disaster or a man-made disaster, as declared by the Governor, the
8 Insurance Commissioner may extend this deadline for investigation an
9 additional twenty (20) days.

10 D. Insurers shall not fail to settle first party claims on the
11 basis that responsibility for payment should be assumed by others
12 except as may otherwise be provided by policy provisions.

13 E. Insurers shall not continue or delay negotiations for
14 settlement of a claim directly with a claimant who is neither an
15 attorney nor represented by an attorney, for a length of time which
16 causes the claimant's rights to be affected by a statute of
17 limitations, or a policy or contract time limit, without giving the
18 claimant written notice that the time limit is expiring and may
19 affect the claimant's rights. Such notice shall be given to first
20 party claimants thirty (30) days, and to third party claimants sixty
21 (60) days, before the date on which such time limit may expire.

22 F. No insurer shall make statements which indicate that the
23 rights of a third party claimant may be impaired if a form or

1 release is not completed within a given period of time unless the
2 statement is given for the purpose of notifying a third party
3 claimant of the provision of a statute of limitations.

4 G. If a lawsuit on the claim is initiated, the time limits
5 provided for in this section shall not apply.

6 SECTION 6. AMENDATORY 36 O.S. 2001, Section 1250.8, is
7 amended to read as follows:

8 Section 1250.8 A. If an insurance policy or insurance contract
9 provides for the adjustment and settlement of first party motor
10 vehicle total losses, on the basis of actual cash value or
11 replacement with another of like kind and quality, one of the
12 following methods shall apply:

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

20 2. An insured may elect a cash settlement based upon the actual
21 cost, less any deductible provided in the policy, to purchase a
22 comparable motor vehicle, including all applicable taxes, license

1 fees and other fees incident to a transfer of evidence of ownership,
2 or a comparable motor vehicle. Such cost may be determined by:

3 a. the cost of a comparable motor vehicle in the local
4 market area when a comparable motor vehicle is
5 available in the local market area,

6 b. one of two or more quotations obtained by an insurer
7 from two or more qualified dealers located within the
8 local market area when a comparable motor vehicle is
9 not available in the local market area, or

10 c. the cost of a comparable motor vehicle as quoted in
11 the latest edition of the National Automobile Dealers
12 Association Official Used Car Guide or monthly edition
13 of any other nationally recognized published
14 guidebook.

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

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

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

10 E. Insurers shall, upon the request of a claimant, include the
11 deductible of a first party claimant, if any, in subrogation
12 demands. Subrogation recoveries shall be shared on a proportionate
13 basis with a first party claimant, unless the deductible amount has
14 been otherwise recovered. No deduction for expenses shall be made
15 from a deductible recovery unless an outside attorney is retained to
16 collect such recovery. The deduction shall then be made for only a
17 pro rata share of the allocated loss adjustment expense.

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

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

6 H. An insurer or its representative shall not require a
7 claimant to obtain motor vehicle repairs at a specific repair
8 facility. An insurer or its representative shall not require a
9 claimant to obtain motor vehicle glass repair or replacement at a
10 specific motor vehicle glass repair or replacement facility. An
11 insurer shall fully and promptly pay for the cost of the motor
12 vehicle repair services or products, less any applicable deductible
13 amount payable according to the terms of the policy. The claimant
14 shall be furnished an itemized priced statement of repairs by the
15 repair facility at the time of acceptance of the repaired motor
16 vehicle. Unless a cash settlement is made, if a claimant selects a
17 motor vehicle repair or motor vehicle glass repair or replacement
18 facility, the insurer shall provide payment to the facility, the
19 claimant, or both, based on a competitive price, as established by
20 that insurer through market surveys or by the insured through
21 competitive bids at the insured's option, to determine a fair and
22 reasonable market price for similar services. Reasonable deviation
23 from this market price is allowed based on the facts in each case.

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

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

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

11 L. In the event of payment of a total loss to a third party
12 claimant, the insurer shall include any registered lien holder as
13 co-payee.

14 M. As used in this section, "total loss" means that the vehicle
15 repair costs plus the salvage value of the vehicle meets or exceeds
16 the actual cash value of the motor vehicle prior to the loss, as
17 provided in used automobile dealer guidebooks.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 6614.1 of Title 36, unless there
20 is created a duplication in numbering, reads as follows:

21 Each service warranty form and all related forms shall clearly
22 and conspicuously state on the cover page:

1 A. the following provision, in substance: "Coverage afforded
2 under this contract is not protected by the Property and Casualty
3 Guaranty Association", and

4 B. the name and address of the insurer which has underwritten
5 the contract, agreement or instrument either directly or through a
6 reinsurance contract.

7 SECTION 8. This act shall become effective November 1, 2003.

8 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-10-03 -
9 DO PASS, As Amended and Coauthored.