

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2101:

Paulk

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2001, Sections 1250.5 and 1250.8, as amended by Section 1, Chapter 358, O.S.L. 2003 (36 O.S. Supp. 2003, Section 1250.8), which relate to the Unfair Claims Settlement Practices Act; prohibiting insurers from taking certain actions in relation to repairs; requiring market survey to be provided by insurer; requiring verbal notification to claimant in certain circumstances; prohibiting insurers from requiring repairs at specified business; requiring notice of choice repair facilities; requiring estimate to provide certain notice; requiring market survey to be provided; requiring verbal notice; making insurer responsible for certain towing and storage fees; requiring insurer to make repair facilities copayee in certain circumstances; prohibiting insurer from contracting with certain businesses under certain conditions; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 1250.5, is amended to read as follows:

Section 1250.5 Any of the following acts by an insurer, if committed in violation of Section 1250.3 of this title, constitutes an unfair claim settlement practice:

1. Failing to fully disclose to first party claimants, benefits, coverages, or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim;
2. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
3. Failing to adopt and implement reasonable standards for prompt investigations of claims arising under its insurance policies or insurance contracts;

4. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;

5. Failing to comply with the provisions of Section 1219 of this title;

6. Denying a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so;

7. Except where there is a time limit specified in the policy, making statements, written or otherwise, which require a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's rights;

8. Requesting a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment;

9. Issuing checks or drafts in partial settlement of a loss or claim under a specified coverage which contain language which releases an insurer or its insured from its total liability;

10. Denying payment to a claimant on the grounds that services, procedures, or supplies provided by a treating physician or a hospital were not medically necessary unless the health insurer or administrator, as defined in Section 1442 of this title, first obtains an opinion from any provider of health care licensed by law and preceded by a medical examination or claim review, to the effect that the services, procedures or supplies for which payment is being denied were not medically necessary. Upon written request of a claimant, treating physician, or hospital, such opinion shall be set forth in a written report, prepared and signed by the reviewing physician. The report shall detail which specific services, procedures, or supplies were not medically necessary, in the opinion of the reviewing physician, and an explanation of that conclusion. A copy of each report of a reviewing physician shall be mailed by

the health insurer, or administrator, postage prepaid, to the claimant, treating physician or hospital requesting same within fifteen (15) days after receipt of such written request. As used in this paragraph, "physician" means a person holding a valid license to practice medicine and surgery, osteopathic medicine, podiatric medicine, dentistry, chiropractic, or optometry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes;

11. Compensating a reviewing physician, as defined in paragraph 10 of this subsection, on the basis of a percentage of the amount by which a claim is reduced for payment;

12. Violating the provisions of the Health Care Fraud Prevention Act;

13. Compelling, without just cause, policyholders to institute suits to recover amounts due under its insurance policies or insurance contracts by offering substantially less than the amounts ultimately recovered in suits brought by them, when such policyholders have made claims for amounts reasonably similar to the amounts ultimately recovered;

14. Failing to maintain a complete record of all complaints which it has received during the preceding three (3) years or since the date of its last financial examination conducted or accepted by the Commissioner, whichever time is longer. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For the purposes of this paragraph, "complaint" means any written communication primarily expressing a grievance; ~~or~~

15. Requesting a refund of all or a portion of a payment of a claim made to a claimant or health care provider more than twenty-four (24) months after the payment is made. This paragraph shall not apply:

- a. if the payment was made because of fraud committed by the claimant or health care provider, or
- b. if the claimant or health care provider has otherwise agreed to make a refund to the insurer for overpayment of a claim; or

16. An insurer or its representative shall not require, recommend, intimidate, coerce, threaten, or induce any incentive to a beneficiary or claimant to use a particular motor vehicle repair or glass repair or replacement facility or to obtain motor vehicle repairs or repair estimates at a specific repair 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 annual market surveys or by the insured through competitive bids at the option of the insured, to determine a fair and reasonable market price for similar services. A copy of the most recent market survey will be provided to the motor vehicle or glass repair facility or the claimant upon written request within five (5) working days of the request. Reasonable deviation from the market price is allowed based on the facts in each case.

An insurer or its representative must notify the claimant verbally at the time of making a claim that they have the right and option to choose any repair facility of their choice for repairs and estimates and within three (3) business days of the claim notify the claimant of their rights in writing. The insurer or representative is not allowed to coerce, steer, intimidate, threaten, suggest

additional insurance premiums or possible cancellation, or suggest that the choice of the claimant will delay the settlement or adjustment of the claim due to the choice of the claimant. An insurer shall not delay adjustment, settlement, payment, or approval of a claim due to the choice of the claimant. An insurer shall not suggest any special warranty or guarantee agreements or coverages due to the repair facility chosen by the claimant. An insurer shall not withhold or delay a rental vehicle if coverage exists, or provide a rental vehicle if coverage does not exist to coerce a claimant to select a specific repair facility. The claimant must be notified in writing within three (3) business days of a claim of the provisions of this section and the rights and options of the claimant.

SECTION 2. 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 directly or indirectly require that appraisals or repairs to a motor vehicle be made or not made by a specified repair business or 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 and represent to a claimant who is making a claim under a policy that the use of or the failure to use a particular repair business may result in the nonpayment or delayed payment of a claim, cancellation of their policy or increase of premiums, or the use of other disincentives to discourage a claimant from using a specific motor vehicle repair business.

Insurers shall not coerce, steer, intimidate, or suggest a repair facility to a claimant. An insurer must inform the claimant in writing and verbally that the choice and option of a repair facility is the choice of the claimant and the insurer is not allowed to suggest a specific repair facility. This information must be shown on the estimate and any other forms given to the claimant in print of equal size of other print on the documents. The insurer, agent, adjuster, appraiser, claim representative, or any other entity representing the insurer shall not accept any incentives, gifts, discounts, office space, or any other enticement for the purpose of suggesting a specific repair facility. Repair facilities shall not offer any incentives, gifts, enticements, discounts, office space, or other acts for the purpose of having repair work directed to a specific repair facility.

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. The estimate must have a statement in same size print that the claimant has the right and option to choose any repair facility of their choice and the selection of the claimant will not affect the claim in any manner. The insurer or representative is not allowed to force or coerce the claimant to any specific repair facility. The insurer or representative shall ask the claimant to sign a statement that they were informed of this right when the estimate was delivered. If a repair facility has a signed repair authorization from the claimant, the insurer does not need the signed statement. The repair authorization must have a statement of the right of the claimant to choose a repair facility.

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, recommend, intimidate, coerce, threaten, or induce any~~ incentive to a beneficiary or claimant to use a particular motor vehicle repair or glass repair or replacement facility or to obtain motor vehicle repairs or repair estimates 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 annual 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. A copy of the most recent market survey will be provided to the motor vehicle or glass repair facility or the claimant upon written request within five (5) working days of the request. Reasonable deviation from this market price is allowed based on the facts in each case. An insurer and representative shall notify the claimant verbally at the time of making a claim that they have the right and option to choose any repair facility of their choice for repairs and estimates and within three (3) business days of making the claim notify the claimant of their rights in writing. The insurer and representative shall not coerce, steer, intimidate, threaten, suggest additional insurance premiums or possible cancellation, or suggest that the choice of the claimant will delay the settlement or adjustment of the claim due to the choice of the claimant. An insurer is not allowed to delay adjustment, settlement, payment, or approval of a claim due to the choice of the claimant. An insurer is not allowed to suggest any special warranty or guarantee agreements or coverages due to the choice of the repair facility by the claimant. An insurer shall not withhold or delay a rental vehicle if coverage exists, or provide a rental vehicle if coverage does not exist to coerce a claimant to select a specific repair facility. The claimant must be notified in writing within three (3) business days of making the claim of the provisions of this section and the rights and options of the claimant.

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. The insurer is responsible for towing and storage fees made by a licensed wrecker service for total loss vehicles. The wrecker service or repair facility shall be listed as payee or a copayee for towing and storage fees unless a paid receipt from the licensed towing service is presented to the insurer.

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. The insurer shall include the repair facility as a payee or a copayee for any supplemental payments or repairs made over the original repair order or estimate.

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.

N. An insurer shall not contract with a person or repairer to manage, handle, or arrange insurance repair work or to act as an agent for the insurer on the condition that a repair facility does claims handling for the insurer at a price established by the insurer. An insurer shall not locate, maintain, or occupy offices in the repair facility. No motor vehicle, towing, glass, or repair facility shall offer any incentive to an insurer for the purpose of "steering" repair work.

SECTION 3. This act shall become effective November 1, 2004.

49-2-8145 DLW 01/11/04