

THE STATE SENATE  
Monday, March 29, 2010

Committee Substitute for  
ENGROSSED

House Bill No. 3213

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 3213 - By: Ortega  
of the House and Sykes of the Senate.

[ insurance - motor vehicle total loss settlement -  
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. 2009,  
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

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

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

8 a. the cost of a comparable motor vehicle in the local  
9 market area when a comparable motor vehicle is  
10 available in the local market area,

11 b. one of two or more quotations obtained by an insurer  
12 from two or more qualified dealers located within the  
13 local market area when a comparable motor vehicle is  
14 not available in the local market area, or

15 c. the cost of a comparable motor vehicle as quoted in  
16 the latest edition of the National Automobile Dealers  
17 Association Official Used Car Guide or monthly edition  
18 of any other nationally recognized published  
19 guidebook.

20 B. If a first party motor vehicle total loss is settled on a  
21 basis which deviates from the methods described in subsection A of  
22 this section, the deviation shall be supported by documentation  
23 giving particulars of the condition of the motor vehicle. Any

1 deductions from such cost, including, but not limited to, deduction  
2 for salvage, shall be measurable, discernible, itemized and  
3 specified as to dollar amount and shall be appropriate in amount.  
4 The basis for such settlement shall be fully explained to a first  
5 party claimant.

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

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

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

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

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

12 H. An insurer or its representative shall not require a  
13 claimant to obtain motor vehicle repairs at a specific repair  
14 facility. An insurer or its representative shall not require a  
15 claimant to obtain motor vehicle glass repair or replacement at a  
16 specific motor vehicle glass repair or replacement facility. An  
17 insurer shall fully and promptly pay for the cost of the motor  
18 vehicle repair services or products, less any applicable deductible  
19 amount payable according to the terms of the policy. The claimant  
20 shall be furnished an itemized priced statement of repairs by the  
21 repair facility at the time of acceptance of the repaired motor  
22 vehicle. Unless a cash settlement is made, if a claimant selects a  
23 motor vehicle repair or motor vehicle glass repair or replacement

1 facility, the insurer shall provide payment to the facility or  
2 claimant based on a competitive price, as established by that  
3 insurer through market surveys or by the insured through competitive  
4 bids at the insured's option, to determine a fair and reasonable  
5 market price for similar services. Reasonable deviation from this  
6 market price is allowed based on the facts in each case.

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

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

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

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

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

1        N. An insurer shall not offer a cash settlement as provided in  
2 paragraph 2 of subsection A of this section for the purchase of a  
3 comparable motor vehicle and then subsequently sell the motor  
4 vehicle which has been determined to be a total loss or a junked  
5 title vehicle pursuant to Section 1105 of Title 47 of the Oklahoma  
6 Statutes back to the claimant if the insurer has determined that the  
7 repair of the vehicle would not result in the vehicle being restored  
8 to operative condition as provided in Section 1111 of Title 47 of  
9 the Oklahoma Statutes unless the claimant specifies in writing or  
10 via an electronic signature that the claimant understands that the  
11 motor vehicle shall be titled as a "junked vehicle".

12        SECTION 2.        AMENDATORY        47 O.S. 2001, Section 1111, as  
13 last amended by Section 2, Chapter 60, O.S.L. 2008 (47 O.S. Supp.  
14 2009, Section 1111), is amended to read as follows:

15        Section 1111. A. As used in this section:

16        1. "Loss" means the cost, in dollars, to repair or replace a  
17 vehicle which has been damaged by collision or other occurrence.  
18 The amount paid by an insurer to a holder of the certificate of  
19 title for repair of a damaged vehicle shall be prima facie evidence  
20 of the amount of the loss. The amount paid by an insurer to a  
21 holder of the certificate of title for replacement of a damaged  
22 vehicle less the resale value of the damaged vehicle shall be prima  
23 facie evidence of the amount of the loss;

1           2. "Fair market value" means the value of a vehicle as listed  
2 in the current National Auto Dealers Association guidebook or other  
3 similar guidebook or the actual cash value, whichever is greater;

4           3. "Resale value" means the amount, in dollars, paid to the  
5 holder of a certificate of title by a willing buyer for a vehicle  
6 damaged by collision or other occurrence or recovered from theft;

7           4. "Total loss" means a loss which is equal to the fair market  
8 value of the vehicle immediately prior to the damage to or theft of  
9 the vehicle; and

10          5. "Vehicle" means a vehicle, as defined in paragraph 29 of  
11 Section 1102 of this title, manufactured within the last seven (7)  
12 model years.

13          B. Any insurance company that pays a total loss on a claim for  
14 any vehicle including, but not limited to, a flood-damaged vehicle  
15 or recovered-theft vehicle, any junk dealer who receives a motor  
16 vehicle which is to be used for junk or for parts, or any other  
17 person permanently dismantling or junking a vehicle shall receive  
18 the certificate of title from the current holder of the certificate  
19 of title, shall detach the license plate from the vehicle, and shall  
20 return the license plate and the certificate of title to the  
21 Oklahoma Tax Commission or a motor license agent within thirty (30)  
22 days from receipt of the certificate. The Tax Commission shall  
23 cancel the certificate of title to the vehicle used for junk or

1 parts and shall preserve the vehicle identification numbers on the  
2 certificate of title in the computer files for at least five (5)  
3 years. The Tax Commission shall transfer ownership of a stolen  
4 vehicle, not recovered from theft at the time of transfer, by  
5 salvage or unrecovered-theft title to the insurer. The Tax  
6 Commission shall transfer ownership of a vehicle damaged by flooding  
7 or other occurrence to the insurer by an original title, salvage  
8 title, or junked title, as may be appropriate, based upon an  
9 estimate of the amount of loss submitted by the insurer. All  
10 license plates surrendered to the Tax Commission shall be destroyed.

11 C. 1. If an insurance company pays a claim for a loss which is  
12 less than a total loss but the cost of repairing the vehicle for  
13 safe operation on the highway exceeds sixty percent (60%) of the  
14 fair market value of the vehicle, or if any vehicle not insured is  
15 damaged to the extent that the cost of repair for safe operation on  
16 the highway exceeds sixty percent (60%) of the fair market value of  
17 the vehicle, any holder of the certificate of title for the vehicle  
18 shall return the certificate of title to the Tax Commission or a  
19 motor license agent within thirty (30) days from receipt of payment  
20 for the loss.

21 2. Upon receipt of the certificate, the Tax Commission or motor  
22 license agent shall issue a salvage title for the vehicle. The  
23 title for any vehicle damaged by flooding shall be stamped with the

1 words "Flood Damaged", and for any such vehicle which was recovered  
2 from a theft, the salvage title or rebuilt title shall be stamped  
3 with the words "Recovered Theft". A licensed dealer subject to the  
4 provisions of the Automotive Dismantlers and Parts Recycler Act,  
5 Section 591.1 et seq. of this title, shall not be required to pay  
6 registration fees, excise taxes, back taxes, or penalties on a  
7 vehicle as a prerequisite to obtaining a salvage title.

8 3. If the actual documented cost of repairing the vehicle for  
9 safe operation on the highway does not exceed sixty percent (60%) of  
10 the fair market value of the vehicle as defined in this section, the  
11 certificate of title shall be reissued to the holder and the vehicle  
12 shall not be subject to inspection as required under this section.  
13 The actual documented cost of repairing the vehicle pursuant to this  
14 paragraph shall be certified ~~by the insurance company paying the~~  
15 loss under oath by the owner and the repair shop actually performing  
16 the repairs.

17 D. If a motor vehicle with a salvage title is placed in  
18 operative condition, application shall be made to the Tax Commission  
19 or a motor license agent for a rebuilt title. A visual inspection  
20 of the vehicle and examination of the vehicle identification numbers  
21 shall be conducted prior to the issuance of a rebuilt title. At the  
22 time of issuance, the salvage title shall be returned to the Tax  
23 Commission by the owner, or by the motor license agent if the motor

1 license agent issues the rebuilt title. A visual inspection shall  
2 also be made of any out-of-state vehicle to be registered and titled  
3 in this state if the vehicle is within the class of vehicles for  
4 which a rebuilt title is required and a similar inspection has not  
5 been conducted by another state. The certificate of title for the  
6 rebuilt vehicle shall be stamped with the words, "This Rebuilt  
7 Vehicle Has Been Inspected By The Appropriate State Official".

8 E. 1. The visual inspections and examination of vehicle  
9 identification numbers shall include, but not be limited to:

- 10 a. comparison of the vehicle identification numbers with  
11 the number recorded on the ownership records,
- 12 b. inspection of the vehicle identification numbers and  
13 the VIN plate to detect possible alteration or other  
14 fraud,
- 15 c. interpretation of the vehicle identification number  
16 recorded on the ownership documents to assure that it  
17 accurately describes the motor vehicle in question,  
18 and
- 19 d. inspection of the odometer of the vehicle to detect  
20 rollback or alteration.

21 2. All vehicle damage shall be repaired before the examination  
22 is conducted. The following paperwork shall be presented to the  
23 motor license agent: the salvage title and original receipts for

1 all parts placed on the vehicle. Components such as doors, motor,  
2 and transmission shall indicate the serial number or the vehicle  
3 identification number (VIN) of the auto the part was purchased from  
4 or removed from.

5 F. The visual inspection and vehicle identification numbers  
6 examination shall be performed by a motor license agent at the  
7 location designated by the motor license agent. If the location of  
8 the inspection is not the place of business of the rebuilder, the  
9 motor license agent shall issue a permit authorizing the applicant  
10 to operate the vehicle upon the public streets, roads, and highways  
11 in route to and from the designated location for the inspection.  
12 The inspection and examination shall be performed within ten (10)  
13 working days after the owner of the vehicle requests the inspection  
14 and examination. Requests shall be made by completing the request  
15 form prescribed and provided by the Tax Commission.

16 G. Inspection and examination of a rebuilt vehicle shall be  
17 performed by a person employed by a motor license agent.

18 H. The fee for the examination by the motor license agent shall  
19 be Twenty-five Dollars (\$25.00), which shall be paid at the time of  
20 issuance of the certificate of title for the rebuilt vehicle. The  
21 motor license agent shall retain Five Dollars (\$5.00) and shall  
22 remit Twenty Dollars (\$20.00) to the Tax Commission which shall  
23 retain Ten Dollars (\$10.00) and transmit Ten Dollars (\$10.00) to the

1 State Treasurer for deposit in the Department of Public Safety  
2 Revolving Fund. The motor license agent and its employees and  
3 agents may not be sued for and shall not be liable for any damages  
4 allegedly arising out of the inspection of a vehicle or any acts or  
5 omissions in the performance of the inspection. The motor license  
6 agent may be held liable for any damages to the vehicle caused by  
7 the negligent acts or omissions in the performance of the  
8 inspection. Any person may be liable for any damages to a vehicle  
9 caused by the intentional acts or omissions in the performance of  
10 the inspection.

11 I. The rebuilt title and any subsequent transfers of such title  
12 shall also reflect that the vehicle was a salvage vehicle, flood-  
13 damaged vehicle or recovered-theft vehicle, if applicable, and also  
14 shall include the salvage date.

15 J. Any title for a motor vehicle issued pursuant to the laws of  
16 any other state which reflects that such vehicle is a salvage  
17 vehicle, a rebuilt vehicle or a junked vehicle or has any other  
18 brand or classification notation by that state shall be retained on  
19 the new title issued by the Tax Commission unless the actual  
20 documented cost of repairing the vehicle for safe operation on the  
21 highway does not exceed sixty percent (60%) of the fair market value  
22 of the vehicle as provided by this section.

1           K. When the insurance company pays a loss on a vehicle which is  
2 registered at the time of mishap, accident, burning, or flooding,  
3 the appropriate certificate of title shall be issued without the  
4 payment of additional registration fees or excise taxes, upon the  
5 submission of a police report or insurance adjuster's report and a  
6 declaration by the insurer that the vehicle is held for sale to a  
7 dealer. If the owner of the vehicle or other insured retains  
8 ownership of the damaged vehicle, the Tax Commission shall notify  
9 the owner or insured of the requirements of this section.

10          L. Any insurance company that pays a claim for a loss where the  
11 cost of repairing the vehicle for safe operation on the highway  
12 exceeds sixty percent (60%) of the market value of the vehicle or  
13 pays a claim for a flood-damaged vehicle as defined in Section 1105  
14 of this title shall notify, in writing, the holder of the  
15 certificate of title of the requirements of this section and shall  
16 notify the Tax Commission of the payment of such claim. The notice  
17 shall include the estimated total damage percentage determination of  
18 the actual cash value made by the insurance company to repair the  
19 vehicle for safe operation on the highway. The insurance company  
20 shall also send a copy of the notification to the holder of the  
21 title. The Tax Commission shall provide notice to the owner of the  
22 vehicle in writing requiring the owner to surrender the title along  
23 with the fee to the Tax Commission or one of its motor license

1 agents within thirty (30) days from the receipt of notice for the  
2 issuance of the appropriate title based on the amount of loss. The  
3 Tax Commission shall reissue the appropriate title with the words  
4 "Flood Damaged" on the face of the title in the case of a flood-  
5 damaged vehicle; provided, no insurance company shall pay a claim  
6 for less than the amount to which the holder of the certificate of  
7 title is rightfully entitled in order to avoid compliance with this  
8 section.

9 M. Except as provided for in subsection N of this section, any  
10 person, firm, corporation, or other legal entity convicted of  
11 violating any provision of this section shall be guilty of a  
12 misdemeanor and shall be punished by a fine of not less than Three  
13 Hundred Dollars (\$300.00) or by incarceration in the county jail for  
14 not more than six (6) months, or by both the fine and incarceration.

15 N. Any owner of a titled vehicle who has knowledge that the  
16 title is not the proper type for the vehicle and, with intent to  
17 misrepresent the vehicle, fails to make the appropriate title  
18 changes, shall be guilty of a misdemeanor. Any person who has  
19 knowledge that the title is not the proper type for the vehicle, and  
20 with intent to misrepresent the vehicle, buys or receives any  
21 vehicle for which the appropriate title changes have not been made  
22 as required by this act shall be guilty of a misdemeanor. Any  
23 person found guilty in accordance with the provisions of this

1 subsection shall be punished by a fine of not more than One Thousand  
2 Dollars (\$1,000.00) for the first offense or Five Thousand Dollars  
3 (\$5,000.00) for the second or subsequent offense, or by imprisonment  
4 in the county jail for a term not exceeding six (6) months, or by  
5 both such fine and imprisonment.

6 O. Any owner of a salvage or junked vehicle shall submit the  
7 certificate of title to the Tax Commission or motor license agent  
8 for issuance of an appropriate title. Any holder of a certificate  
9 of title issued by this state, to a vehicle which no longer exists,  
10 shall surrender the certificate of title to the Tax Commission for  
11 cancellation. The vehicle identification number on the canceled  
12 certificate of title shall be preserved in the computer of the Tax  
13 Commission for at least five (5) years.

14 Nothing in this section shall be construed to prevent the  
15 transfer of ownership of a vehicle by assignment of the title to a  
16 used car dealer, wholesale used car dealer, or a licensed automotive  
17 dismantler or parts recycler.

18 SECTION 3. This act shall become effective November 1, 2010.

19 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated  
20 3-25-10 - DO PASS, As Amended.