

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 3132

By: Cockroft

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2011, Section 1250.8, which relates to the Unfair Claim Settlement Practices Act; requiring insurers to conduct annual market surveys for certain collision repair facilities; requiring survey be sent to certain location; requiring certain information be included in the surveys; requiring submission to the Insurance Commissioner; requiring Insurance Department to publish surveys online; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, 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

1 incident to the transfer of evidence of ownership of the motor  
2 vehicle paid, at no cost to the insured other than any deductible  
3 provided in the policy. The offer and any rejection thereof shall  
4 be documented in the claim file; or

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

- 10 a. the cost of a comparable motor vehicle in the local  
11 market area when a comparable motor vehicle is  
12 currently or recently available in the prior ninety  
13 (90) days in the local market area,  
14 b. one of two or more quotations obtained by an insurer  
15 from two or more qualified dealers located within the  
16 local market area when a comparable motor vehicle is  
17 not available in the local market area, or  
18 c. the cost of a comparable motor vehicle as quoted in  
19 the latest edition of the National Automobile Dealers  
20 Association Official Used Car Guide or monthly edition  
21 of any other nationally recognized published  
22 guidebook.

23 B. If a first party motor vehicle total loss is settled on a  
24 basis which deviates from the methods described in subsection A of

1 this section, the deviation shall be supported by documentation  
2 giving particulars of the condition of the motor vehicle. Any  
3 deductions from such cost, including, but not limited to, deduction  
4 for salvage, shall be measurable, discernible, itemized and  
5 specified as to dollar amount and shall be appropriate in amount.  
6 The basis for such settlement shall be fully explained to a first  
7 party claimant.

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

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

17 E. Insurers shall, upon the request of a claimant, include the  
18 deductible of a first party claimant, if any, in subrogation  
19 demands. Subrogation recoveries shall be shared on a proportionate  
20 basis with a first party claimant, unless the deductible amount has  
21 been otherwise recovered. No deduction for expenses shall be made  
22 from a deductible recovery unless an outside attorney is retained to  
23 collect such recovery. The deduction shall then be made for only a  
24 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  
24 facility, the insurer shall provide payment to the facility or

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

6 I. An insurer that covers the cost of the insured's motor  
7 vehicle repair services or products shall conduct an annual market  
8 survey of motor vehicle repair and motor vehicle glass repair or  
9 replacement facilities in order to determine competitive prices as  
10 follows:

11 1. On an annual basis, the insurer shall send a market survey  
12 to motor vehicle repair and motor vehicle glass repair or  
13 replacement facilities. At least one market survey shall be sent to  
14 a motor vehicle repair or motor vehicle glass repair or replacement  
15 facility located within this state to gain accurate prevailing rate  
16 information;

17 2. The market survey shall request, but is not limited to, the  
18 following information from motor vehicle repair and motor vehicle  
19 glass repair or replacement facilities:

- 20 a. material cost averages,
- 21 b. labor cost averages,
- 22 c. frame and infrastructure cost averages, and
- 23 d. mechanical cost averages; and
- 24

1        3. Insurers shall submit the market surveys to the Insurance  
2 Commissioner beginning on January 1, 2018 and before January 1 of  
3 each year thereafter. The Oklahoma Department of Insurance shall  
4 publish the annual market surveys on the Department's website.

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

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

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

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

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

22        ~~N.~~ O. An insurer shall not offer a cash settlement as provided  
23 in paragraph 2 of subsection A of this section for the purchase of a  
24 comparable motor vehicle and then subsequently sell the motor

1 vehicle which has been determined to be a total loss back to the  
2 claimant if the insurer has determined that the repair of the  
3 vehicle would not result in the vehicle being restored to operative  
4 condition as provided in Section 1111 of Title 47 of the Oklahoma  
5 Statutes unless the claimant specifies in writing or via an  
6 electronic signature that the claimant understands that the motor  
7 vehicle shall be titled as a "junked vehicle".

8 SECTION 2. This act shall become effective November 1, 2016.

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