

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 HOUSE BILL 3088

By: Cockroft

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6 AS INTRODUCED

7 An Act relating to insurance; amending 36 O.S. 2011,
8 Section 1250.8, which relates to motor vehicle total
9 loss or damage claims; requiring the insurer to
provide market survey information to any requesting
parties; and providing an effective date.

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

13 SECTION 1. AMENDATORY 36 O.S. 2011, Section 1250.8, is
14 amended to read as follows:

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

20 1. An insurer may elect to offer a replacement motor vehicle
21 which is a specific comparable motor vehicle available to the
22 insured, with all applicable taxes, license fees, and other fees
23 incident to the transfer of evidence of ownership of the motor
24 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 insurer 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 currently or recently available in the prior ninety
11 (90) days in the local market area,

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

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

21 B. If a first party motor vehicle total loss is settled on a
22 basis which deviates from the methods described in subsection A of
23 this section, the deviation shall be supported by documentation
24 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.

23 F. If an insurer prepares an estimate of the cost of automobile
24 repairs, such estimate shall be in an amount for which it reasonably

1 may be expected that the damage can be repaired satisfactorily. An
2 insurer shall give a copy of an estimate to a claimant and may
3 furnish to the claimant the names of one or more conveniently
4 located repair shops, if requested by the claimant.

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

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

1 bids at the insured's option, to determine a fair and reasonable
2 market price for similar services. An insurer using market surveys
3 pursuant to this subsection shall provide the survey date,
4 methodology, geography, number of respondents, questions asked and
5 the resulting data distribution to any party requesting such
6 information. Reasonable deviation from this market price is allowed
7 based on the facts in each case.

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

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

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

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

21 M. As used in this section, "total loss" means that the vehicle
22 repair costs plus the salvage value of the vehicle meets or exceeds
23 the actual cash value of the motor vehicle prior to the loss, as
24 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 back to the
5 claimant if the insurer has determined that the repair of the
6 vehicle would not result in the vehicle being restored to operative
7 condition as provided in Section 1111 of Title 47 of the Oklahoma
8 Statutes unless the claimant specifies in writing or via an
9 electronic signature that the claimant understands that the motor
10 vehicle shall be titled as a "junked vehicle".

11 SECTION 2. This act shall become effective November 1, 2018.

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13 56-2-8907 AMM 12/12/17

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