An Act

ENROLLED HOUSE
BILL NO. 3213

By: Ortega of the House

and

Sykes of the Senate

An Act relating to insurance; amending 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), which relates to motor vehicle total loss settlement; specifying that insurers may elect cash settlements in certain circumstances; specifying availability requirements in the determination of certain motor vehicle cost calculations; requiring insurers to notify claimants if vehicles to be sold back to claimants will remain junked; amending 47 O.S. 2001, Section 1111, as last amended by Section 2, Chapter 60, O.S.L. 2008 (47 O.S. Supp. 2009, Section 1111), which relates to the payment of total loss claims; specifying that certificates of title shall not be reissued for junked vehicle; providing exception; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 1250.8, 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 provided in the policy. The offer and any rejection thereof shall be documented in the claim file; or

2. An ~~insured~~ insurer 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 currently or recently available in the prior ninety (90) days 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 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.

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.

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 to obtain motor vehicle repairs 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 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. Reasonable deviation from this market price is allowed based on the facts in each case.

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.

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.

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

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

Section 1111. A. As used in this section:

1. "Loss" means the cost, in dollars, to repair or replace a vehicle which has been damaged by collision or other occurrence.

The amount paid by an insurer to a holder of the certificate of title for repair of a damaged vehicle shall be prima facie evidence of the amount of the loss. The amount paid by an insurer to a holder of the certificate of title for replacement of a damaged vehicle less the resale value of the damaged vehicle shall be prima facie evidence of the amount of the loss;

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

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

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

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

B. Any insurance company that pays a total loss on a claim for any vehicle including, but not limited to, a flood-damaged vehicle or recovered-theft vehicle, any junk dealer who receives a motor vehicle which is to be used for junk or for parts, or any other person permanently dismantling or junking a vehicle shall receive the certificate of title from the current holder of the certificate of title, shall detach the license plate from the vehicle, and shall return the license plate and the certificate of title to the Oklahoma Tax Commission or a motor license agent within thirty (30) days from receipt of the certificate. The Tax Commission shall cancel the certificate of title to the vehicle used for junk or parts and shall preserve the vehicle identification numbers on the certificate of title in the computer files for at least five (5) years. No certificate of title may be reissued on a junked vehicle as defined in Section 1105 of this title, unless reissued pursuant to paragraph 3 of subsection C of this section. The Tax Commission shall transfer ownership of a stolen vehicle, not recovered from theft at the time of transfer, by salvage or unrecovered-theft title to the insurer. The Tax Commission shall transfer ownership of a vehicle damaged by flooding or other occurrence to the insurer by an original title, salvage title, or junked title, as may be appropriate, based upon an estimate of the amount of loss submitted

by the insurer. All license plates surrendered to the Tax Commission shall be destroyed.

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

2. Upon receipt of the certificate, the Tax Commission or motor license agent shall issue a salvage title for the vehicle. The title for any vehicle damaged by flooding shall be stamped with the words "Flood Damaged", and for any such vehicle which was recovered from a theft, the salvage title or rebuilt title shall be stamped with the words "Recovered Theft". A licensed dealer subject to the provisions of the Automotive Dismantlers and Parts Recycler Act, Section 591.1 et seq. of this title, shall not be required to pay registration fees, excise taxes, back taxes, or penalties on a vehicle as a prerequisite to obtaining a salvage title.

3. If the actual documented cost of repairing the vehicle for safe operation on the highway does not exceed sixty percent (60%) of the fair market value of the vehicle as defined in this section, the certificate of title shall be reissued to the holder and the vehicle shall not be subject to inspection as required under this section. The actual documented cost of repairing the vehicle pursuant to this paragraph shall be certified by the insurance company paying the loss.

D. If a motor vehicle with a salvage title is placed in operative condition, application shall be made to the Tax Commission or a motor license agent for a rebuilt title. A visual inspection of the vehicle and examination of the vehicle identification numbers shall be conducted prior to the issuance of a rebuilt title. At the time of issuance, the salvage title shall be returned to the Tax Commission by the owner, or by the motor license agent if the motor license agent issues the rebuilt title. A visual inspection shall also be made of any out-of-state vehicle to be registered and titled in this state if the vehicle is within the class of vehicles for which a rebuilt title is required and a similar inspection has not

been conducted by another state. The certificate of title for the rebuilt vehicle shall be stamped with the words, "This Rebuilt Vehicle Has Been Inspected By The Appropriate State Official".

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

a. comparison of the vehicle identification numbers with the number recorded on the ownership records,

b. inspection of the vehicle identification numbers and the VIN plate to detect possible alteration or other fraud,

c. interpretation of the vehicle identification number recorded on the ownership documents to assure that it accurately describes the motor vehicle in question, and

d. inspection of the odometer of the vehicle to detect rollback or alteration.

2. All vehicle damage shall be repaired before the examination is conducted. The following paperwork shall be presented to the motor license agent: the salvage title and original receipts for all parts placed on the vehicle. Components such as doors, motor, and transmission shall indicate the serial number or the vehicle identification number (VIN) of the auto the part was purchased from or removed from.

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

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

H. The fee for the examination by the motor license agent shall be Twenty-five Dollars ($25.00), which shall be paid at the time of issuance of the certificate of title for the rebuilt vehicle. The motor license agent shall retain Five Dollars ($5.00) and shall remit Twenty Dollars ($20.00) to the Tax Commission which shall retain Ten Dollars ($10.00) and transmit Ten Dollars ($10.00) to the State Treasurer for deposit in the Department of Public Safety Revolving Fund. The motor license agent and its employees and agents may not be sued for and shall not be liable for any damages allegedly arising out of the inspection of a vehicle or any acts or omissions in the performance of the inspection. The motor license agent may be held liable for any damages to the vehicle caused by the negligent acts or omissions in the performance of the inspection. Any person may be liable for any damages to a vehicle caused by the intentional acts or omissions in the performance of the inspection.

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

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

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

L. Any insurance company that pays a claim for a loss where the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of the market value of the vehicle or pays a claim for a flood-damaged vehicle as defined in Section 1105

of this title shall notify, in writing, the holder of the certificate of title of the requirements of this section and shall notify the Tax Commission of the payment of such claim. The notice shall include the estimated total damage percentage determination of the actual cash value made by the insurance company to repair the vehicle for safe operation on the highway. The insurance company shall also send a copy of the notification to the holder of the title. The Tax Commission shall provide notice to the owner of the vehicle in writing requiring the owner to surrender the title along with the fee to the Tax Commission or one of its motor license agents within thirty (30) days from the receipt of notice for the issuance of the appropriate title based on the amount of loss. The Tax Commission shall reissue the appropriate title with the words "Flood Damaged" on the face of the title in the case of a flood-damaged vehicle; provided, no insurance company shall pay a claim for less than the amount to which the holder of the certificate of title is rightfully entitled in order to avoid compliance with this section.

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

N. Any owner of a titled vehicle who has knowledge that the title is not the proper type for the vehicle and, with intent to misrepresent the vehicle, fails to make the appropriate title changes, shall be guilty of a misdemeanor. Any person who has knowledge that the title is not the proper type for the vehicle, and with intent to misrepresent the vehicle, buys or receives any vehicle for which the appropriate title changes have not been made as required by this act shall be guilty of a misdemeanor. Any person found guilty in accordance with the provisions of this subsection shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) for the first offense or Five Thousand Dollars ($5,000.00) for the second or subsequent offense, or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment.

O. Any owner of a salvage or junked vehicle shall submit the certificate of title to the Tax Commission or motor license agent for issuance of an appropriate title. Any holder of a certificate of title issued by this state, to a vehicle which no longer exists,

shall surrender the certificate of title to the Tax Commission for cancellation. The vehicle identification number on the canceled certificate of title shall be preserved in the computer of the Tax Commission for at least five (5) years.

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

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

Passed the House of Representatives the 13th day of May, 2010.

Presiding Officer of the House of Representatives

Passed the Senate the 21st day of May, 2010.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 24th **day of** May, **20**10, **at** 1:17 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 5th **day of** June, **20**10, **at** 2:59 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 7th **day of** June, **20**10, **at** 11:20 **o'clock** A **M.**

By: M. Susan Savage