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H.283

Introduced by Representative Scheuermann of Stowe

Referred to Committee on

Date:

Subject: Insurance; automobiles; total loss; claims settlement

Statement of purpose of bill as introduced: This bill proposes to establish methods for the settlement of insurance claims for automobiles declared a total loss.

An act relating to methods of claims settlement for automobile total losses

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 8 V.S.A. § 4724a is added to read:

§ 4724a. AUTOMOBILE INSURANCE; TOTAL LOSS; SETTLEMENT

(a) When an insurance policy provides for the adjustment and settlement of first party automobile 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) The insurer may elect to offer a replacement automobile that is at least comparable in that it will be by the same manufacturer, same or newer year, similar body style, similar options and mileage as the insured vehicle, and in as good or better overall condition and available for inspection at a licensed

1 dealer within a reasonable distance of the insured's residence. The insurer
2 shall pay all applicable taxes, license fees, and other fees incident to transfer of
3 evidence of ownership of the automobile paid, at no cost other than any
4 deductible provided in the policy. The offer and any rejection thereof must be
5 documented in the claim file.

6 (2) The insurer may elect a cash settlement based upon the actual cost,
7 less any deductible provided in the policy, to purchase a comparable
8 automobile including all applicable taxes, license fees, and other fees incident
9 to transfer of evidence of ownership of a comparable automobile. Such cost
10 may be derived from:

11 (A) The cost of two or more comparable automobiles in the local
12 market area when comparable automobiles are available or were available
13 within the last 90 days to consumers in the local market area; or

14 (B) The cost of two or more comparable automobiles in areas
15 proximate to the local market area, including the closest major metropolitan
16 areas within or without the State, that are available or were available within the
17 last 90 days to consumers when comparable automobiles are not available in
18 the local market area pursuant to subdivision (A) of this subdivision (2); or

19 (C) One of two or more quotations obtained by the insurer from two
20 or more licensed dealers located within the local market area when the cost of

1 comparable automobiles is not available pursuant to subdivision (A) of this
2 subdivision (2); or

3 (D) Any source for determining statistically valid fair market values
4 that meet all of the following criteria:

5 (i) The source shall give primary consideration to the values of
6 vehicles in the local market area and may consider data on vehicles outside the
7 area;

8 (ii) The source's database shall produce values for at least 85
9 percent of all makes and models for the last 15 model years taking into account
10 the values of all major options for such vehicles; and

11 (iii) The source shall produce fair market values based on current
12 data available from the area surrounding the location where the insured vehicle
13 was principally garaged or a necessary expansion of parameters, such as time
14 and area, to assure statistical validity.

15 (E) If the insurer is notified within 35 days of the receipt of the claim
16 payment that the insured cannot purchase a comparable vehicle for the market
17 value, the company shall reopen its claim file and the following procedures
18 shall apply:

19 (i) The company may locate a comparable vehicle by the same
20 manufacturer, same year, similar body style, and similar options and price
21 range for the insured for the market value determined by the company at the

1 time of settlement. Any such vehicle must be available through licensed
2 dealers;

3 (ii) The company shall either pay the insured the difference
4 between the market value before applicable deductions and the cost of the
5 comparable vehicle of like, kind, and quality which the insured has located, or
6 negotiate and effect the purchase of this vehicle for the insured;

7 (iii) The company may elect to offer a replacement in accordance
8 with the provisions set forth in subdivision (a)(1) of this section; or

9 (iv) The company may conclude the loss settlement as provided
10 for under the appraisal section of the insurance policy in force at the time of
11 loss. This appraisal shall be considered binding against both parties but shall
12 not preclude or waive any other rights either party has under the insurance
13 policy or under common law. The company is not required to take action
14 under this subdivision if its documentation to the insured at the time of
15 settlement included written notification of the availability and location of a
16 specified and comparable vehicle of the same manufacturer, same year, similar
17 body style, and similar options in as good or better condition as the total loss
18 vehicle which could have been purchased for the market value determined by
19 the company before applicable deductions. The documentation shall include
20 the vehicle identification number.

1 (3) When a first party automobile total loss is settled on a basis which
2 deviates from the methods described in subdivisions (a)(1) and (2) of this
3 section, the deviation must be supported by documentation giving particulars
4 of the automobile condition. Any deductions from the cost, including
5 deduction for salvage, must be measurable, discernible, itemized, and specified
6 as to dollar amount and shall be appropriate in amount. The basis for the
7 settlement shall be fully explained to the first-party claimant.

8 (b) For purposes of this section:

9 (1) "First-party claimant" means an individual, corporation, association,
10 partnership, or other legal entity asserting a right to payment under an
11 insurance policy or insurance contract arising out of the occurrence of the
12 contingency or loss covered by such policy or contract.

13 (2) "Insurer" means a person licensed to issue any insurance policy or
14 insurance contract in this State.

15 Sec. 2. EFFECTIVE DATE; APPLICATION

16 This act shall take effect on passage and shall apply to insurance claims
17 reported on or after July 1, 2013.