

**REVISED PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R031-17

December 15, 2017

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 679B.130 and 686A.015.

A REGULATION relating to insurance; revising provisions establishing minimum standards for claims settlement practices for the settlement of claims for automobile total loss; eliminating certain obsolete language; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing regulations establish certain minimum standards in claims settlement practices that are applicable to most insurers. (NAC 686A.600-686A.680) In particular, existing regulations establish particular standards for insurers when settling claims for automobile total loss filed by the holder of the policy, known as “first-party claims.” These standards establish the valuation methods that an insurer is required to use when settling such a claim by means of a cash settlement based on the cost to purchase an automobile comparable to the total loss automobile, as adjusted by any deductible, applicable taxes, license fees and other fees. (NAC 686A.680) This regulation eliminates various references to first-party claims, which has the effect of making the standards also applicable to insurers when settling claims for automobile total loss filed by claimants other than the holders of the applicable policies, known as “third-party claims.” This regulation also authorizes the use of statistically valid fair market values as an additional valuation method to determine the cost of an automobile for purposes of a cash settlement. This regulation further provides that the amount of a cash settlement must not be less than the lowest adjusted valuation obtained using an authorized valuation method. Finally, this regulation eliminates certain obsolete language concerning the designation by an insurer of a specific repair shop when the insurer elects to repair a damaged automobile.

Section 1. NAC 686A.680 is hereby amended to read as follows:

686A.680 1. ~~When an insurance policy provides for the adjustment and settlement of first-party~~ *An insurer that adjusts and settles a claim for an* automobile total ~~losses on the~~

~~basis of actual cash value or replacement with another of like kind and quality, one of the following methods must be applied:} *loss shall use the method set forth in paragraph (a) or (b).*~~

(a) The insurer may elect to offer a replacement automobile which is a specific comparison automobile available to the ~~insured,} *claimant,*~~ with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the *applicable* policy. The insurer may prorate license fees and limit payment to the unused period of the fees. The offer and any rejection of the offer must be documented in the claim file.

(b) The insurer may elect to make a cash settlement based upon the ~~actual} cost,~~ less any deductible provided in the *applicable* policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. The cost must be determined ~~by an evaluation of:} *using one of the following valuation methods:*~~

(1) The *average of the* cost of two or more comparable automobiles ~~in the local market area} which ~~are} :~~~~

~~(I) *Are* currently available or were available within the most previous 90 days ~~to consumers} in the local market area;~~~~

~~{(2) If the cost cannot be determined pursuant to subparagraph (1), the cost of two or more comparable automobiles that are currently available or were available in the most previous 90 days to consumers in areas, both within and without this State, which are geographically proximate to the local market area; or~~

~~—— (3) If the cost cannot be determined pursuant to subparagraph (1) or (2),} *or*~~

(II) If not currently available or available within the most previous 90 days in the local market area, are currently or were available within any extended period or in any expanded market area, so long as the extension or expansion is no greater than necessary to identify two or more such automobiles;

(2) The average of two or more price quotations for a comparable automobile obtained by the insurer from two or more licensed dealers located within the local market area †

~~*—(c) When a first party automobile total loss is settled on a basis which deviates from the methods described in paragraphs (a) and (b) of this subsection, the† ; or*~~

(3) The value of a comparable automobile as determined by any source of statistically valid fair market values for automobiles if the method used by the source to determine the value:

(I) Gives primary consideration to the value of automobiles in a claimant's local market area and considers data for automobiles outside that area only if relevant data for a claimant's local market area is not available or is insufficient to produce a statistically valid fair market value;

(II) Uses a database or other data resource that is capable of producing statistically valid fair market values for at least 85 percent of all makes and models of automobiles for the most recent 15 model years, taking into account the value of all major options for such automobiles; and

(III) Produces a statistically valid fair market value for an automobile that is based on current data available from the area surrounding the location in which a claimant's automobile was principally garaged or on any adjustment to those parameters that is necessary to ensure statistical validity.

↳ *Except as otherwise provided in subsection 2, the amount of a cash settlement must not be less than the lowest valuation obtained using a valuation method set forth in subparagraph (1), (2) or (3), as adjusted by any deductible, taxes, license fees and other fees.*

2. Any deviation *in the amount of a cash settlement from a valuation obtained pursuant to paragraph (b) of subsection 1* must be supported by documents giving particulars of the condition of the automobile. Any deductions from the cost, including a deduction for salvage, must be measurable, discernible, itemized and specified as to the amount and must be appropriate in amount. *When determining the deduction for salvage, the insurer shall take into account any decrease in value caused by an inspection of the vehicle if the vehicle was in a drivable condition before the inspection and the person that performs the inspection is unable to restore the vehicle to the same drivable condition as before the inspection.* The basis for the settlement must be *documented in the claim file and* fully ~~explained~~ *disclosed* to the ~~first-party~~ claimant ~~in~~

~~2.~~ *in writing.*

3. Where liability and damages are reasonably clear, an insurer may not recommend that a third-party claimant make a claim under his or her own policies solely to avoid paying claims under the insurer's insurance contract or policy.

~~3.~~ 4. An insurer may not require a claimant to travel unreasonably to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

~~4.~~ 5. An insurer shall, upon the claimant's request, include the first-party claimant's deductible, if any, in subrogation demands. A subrogation recovery must be shared on a proportionate basis with the first-party claimant, unless the deductible amount has been

otherwise recovered. No deduction for expenses may be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be for no more than a pro rata share of the allocated loss adjustment expense.

~~{5.}~~ 6. If an insurer prepares an estimate of the cost of automobile repairs, the estimate must be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops. Any such repair shop must be operated by a person having a license issued by the Department of Motor Vehicles, if such a license is required by NRS 487.610.

~~{6.}~~ 7. When the amount claimed is reduced because of betterment or depreciation, all information supporting the reduction must be contained in the claim file ~~{}~~ *and fully disclosed to the claimant in writing*. The deductions must be itemized and specified as to amount, and must be appropriate in amount.

~~{7.}~~ 8. When the insurer elects to repair ~~and designates a specific repair shop for automobile repairs:~~

~~—(a) The repair shop must be operated by a person having a license issued by the Department of Motor Vehicles, if such a license is required by NRS 487.610; and~~

~~—(b) The~~ *a damaged automobile, the* insurer shall cause the damaged automobile to be restored to its condition before the loss at no additional cost to the claimant, other than as stated in the *applicable* policy, within a reasonable time.

~~{8.}~~ 9. The insurer may not use, as a basis for cash settlement with a ~~{first-party}~~ claimant, an amount which is less than the amount which the insurer would pay if repairs were made, other than in total loss situations, unless the amount is agreed to by the ~~{insured.}~~ *claimant*.