

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Chairman Rex Hoy at
Chairperson

3:30 ~~xxx~~/p.m. on February 23, 1983 in room 521 S of the Capitol.

All members were present except:
Rep. Fuller, who was excused

Committee staff present:
Wayne Morris, Legislative Research
Gordon Self, Revisor's Office
Mary Sorensen, Committee secretary

Conferees appearing before the committee:
Rep. Heinemann, Sponsor of HB 2255
Dick Brock, Kansas Insurance Department
Rep. Spaniol, Sponsor of HB 2336
L. M. Cornish, for Kansas Association of Property and
Larry Smith, for the Western Insurance Companies
David Ross, for the Farmers Insurance Group
Keith Hall, Hall Claims and Appraisal Services, Salina, KS

Others present:
See List (Attachment 1) Pages 1 and 2

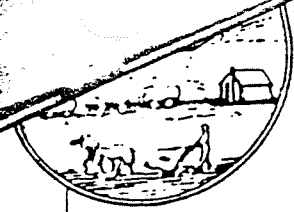
Rep. Heinemann spoke on HB 2255, and explained his reason for introducing the bill. He passed around a letter dated January 16, 1976, from Fletcher Bell, Commissioner of Insurance, concerning the problem (Attachment 2). Dick Brock, of the Insurance Department, said that this problem was not new to the insurance department, and he suggested several changes to the bill that he thought would make it more clearly reflect what Rep. Heinemann was working for.

Rep. Spaniol then spoke for HB 2336, and passed out prepared testimony (Attachment 3). He read portions of his testimony and asked for support of his bill as written. Dick Brock of the Insurance Department said that on other occasions their department had proposed laws that adjustors be licensed and they support HB 2336. He made several suggestions for possible changes to the bill. There was some question about a fiscal note on this bill, and Mr. Brock said it was not expected to be high, they had estimated somewhere around \$15,300. He said agents' license examination fees were approximately the same as expenses, and that might be the situation with adjustors' license fees. There was also discussion as to the exclusions on the first page of the bill.

Keith Hall, from Salina, KS, representing the Kansas Claims Association and Mid-Kansas Claims Association, then spoke against HB 2336. He passed out Attachment 4, which gives various statistics from the other states and governmental entities that presently license adjustors, and Attachment 5, which is titled "Unfair Claims Settlement Practices Model Regulation. He said their association feels that this gives the State Insurance Department adequate control over adjustors, and if the insurance committee elects to pass this bill he would like to see Public Adjustors included in the bill. There was discussion then on what a public adjustor was, and whether or not there were any in Kansas. In response to a question Mr. Hall said their associations were not completely against a bill to license adjustors, they just were not in favor of this particular piece of legislation.

Larry Smith, from Fort Scott, KS, representing the Western Companies, then spoke in opposition to HB 2336, explaining that they did not feel it was necessary as their company provided adequate training for adjustors, in their opinion. L. M. Cornish, representing the Kansas Association of Property and Casualty Insurance Companies, spoke in opposition to HB 2336. He also thought that the companies trained their adjustors sufficiently, and were quick to act if they had a complaint of any kind from the insurance department. David Ross, of the Farmers Insurance Group, also spoke in opposition to the bill, and explained the extensive training program of their companies for adjustors. There were questions, and discussion as to the need for a bill to license adjustors in view of the training programs provided by the companies, and the supervision provided by the insurance department.

The meeting adjourned at 4:55 PM.



FLETCHER BELL

COMMISSIONER OF INSURANCE

January 16, 1976

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Attachment 2
1-800-432-2484

Mrs. Barbara Brown, L.B.S.W.,
Medical Social Worker
Wesley Medical Center
Regional Perinatal Care
Wichita, Kansas 67214

Dear Mrs. Brown:

Thank you for your letter of January 7, 1976 regarding House Bill No. 1795.

As you requested I am enclosing a copy of K.S.A. 40-2,102, providing insurance coverage for newly born children. This statute became effective on October 28, 1974. It provides that all policies issued which provide coverage for a family member of the insured shall as to such family member's coverage, also provide health coverage for newborn children of the insured from the moment of birth. This law provides coverage due to injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities but does not provide coverage for well baby care.

As stated in the statute, this newborn coverage only applies to policies issued or delivered after the effective date of the law of October 28, 1974. However, it has been this Department's interpretation of this law that newborn infant care be provided to current policyholders as well as those whose policies were issued or delivered after the effective date of the law, if a charge was not made for the additional charge. The basis of our interpretation is that if new issuances are offered this coverage at the same premium rate that outstanding policyholders are paying, the company would be discriminating against the outstanding policyholders as they would be receiving fewer benefits, by not being offered newborn infant coverage, but would be paying the same premium rates.

This law applies to all policies issued in this state whether or not the insurance company's home office is based outside of Kansas. However, the required coverage, as provided by this statute, does not apply to group contracts which are issued and delivered outside Kansas, even though there may be insured group members living in Kansas.

Atch. 2

Attachment 3

DENNIS SPANIOL
 REPRESENTATIVE, NINETY-FOURTH DISTRICT
 SEDGWICK COUNTY
 438 S. SOCORA
 WICHITA, KANSAS 67209
 (316) 722-2044
 ROOM 280-W, CAPITOL BLDG.
 TOPEKA, KANSAS 66612
 (913) 296-2734



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 VICE-CHAIRMAN INSURANCE
 MEMBER, ASSESSMENT AND TAXATION
 JOINT COMMITTEE ON ADMINISTRATIVE
 RULES AND REGULATIONS
 PUBLIC HEALTH AND WELFARE

BEFORE YOU IS HB 2336 CONCERNING THE LICENSING OF INSURANCE ADJUSTERS IN THE STATE OF KANSAS. I HAVE SPONSORED THIS LEGISLATION BECAUSE I FEEL THERE IS A VERY REAL NEED TO REGULATE A HIGHLY COMPLEX AREA OF THE INSURANCE INDUSTRY, WHICH IS SOMETIMES STAFFED BY LESS THAN QUALIFIED INDIVIDUALS. IT SHOULD BE NOTED THAT 39 STATES HAVE NOW PASSED SOME TYPE OF LEGISLATION REGARDING THE LICENSING OF INSURANCE ADJUSTERS.

THERE ARE THREE ARGUMENTS NORMALLY USED AGAINST THE LICENSING OF ADJUSTERS; (1) ADEQUATE TRAINING IS ALREADY PROVIDED BY THE COMPANY. THE ADDITIONAL REGULATION IS NOT REQUIRED. (2) THE UNFAIR CLAIMS PRACTICE ACT PROVIDES SUFFICIENT PROTECTION FOR THE PUBLIC, AND (3) THE ADJUSTERS ARE POLICED BY THE COMPANIES FOR WHICH THEY WORK. TO TAKE SOME OF THE IMPACT OUT OF THE OPPONENTS TESTIMONY, I WILL TELL YOU WHY I DONT FEEL THESE ARE GOOD ARGUMENTS.

LET ME GIVE YOU SOME BACKGROUND ON THE USUAL TRAINING PROVIDED ADJUSTERS. THE NORMAL QUALIFICATIONS ARE A COLLEGE DEGREE OR PRIOR ADJUSTING BACKGROUND. I WOULD POINT OUT THERE IS NO COLLEGE DEGREE FOR INSURANCE. THERE ARE A FEW COURSES OFFERED IN THE AREA OF RISK MANAGEMENT AND BUSINESS LAW, BUT NOTHING IS COMMONLY AVAILABLE THAT IS AN INTRICAL PART OF A COLLEGE EDUCATION AS IT PERTAINS TO INSURANCE CLAIMS HANDLING. THERE ARE SELF STUDY COURSES AVAILABLE FOR ADJUSTERS THROUGH THE INSURANCE INSTITUTE OF AMERICA, BUT THEY ARE NOT MANDATORY. THERE ARE MANY ADJUSTERS WHOSE ONLY FORMAL CLAIMS TRAINING IS A COMPANY PROGRAM AND ON THE JOB TRAINING. LET ME ASSURE YOU THAT MANY COMPANY PROGRAMS FALL FAR SHORT OF SOUND TRAINING.

I CAN RELATE MY PERSONAL EXPERIENCES OF GOING TO WORK FOR A MULTIPLE LINE INSURANCE COMPANY AS AN ADJUSTER. I WAS GIVEN A STACK OF CLAIMS MANUALS ROUGHLY EQUAL IN SIZE TO A SET OF KANSAS STATUES. I WAS GIVEN A THREE WEEK CLASS IN THE HOME OFFICE TO COMPLETELY DIGEST THE MANUALS. AT THE END OF THE THREE WEEK CLASS, I WAS TURNED LOOSE ON THE PUBLIC AS A FULLY TRAINED ADJUSTER.

I WOULD ALSO LIKE TO POINT OUT TO THIS COMMITTEE, THAT THE STATE OF KANSAS REQUIRES BOTH INDEPEDENT AND COMPANY AGENTS TO BE LICENSED TO SELL INSURANCE. AN ADJUSTER MUST HAVE AN EVEN GREATER KNOWLEDGE OF THE COVERAGE PROVIDED BY AN INSURANCE POLICY, YET AT THIS TIME, THEY ARE NOT REQUIRED TO DEMONSTRATE ANY EXPERTISE PRIOR TO DEALING WITH THE GENERAL PUBLIC IN A CLAIMS SITUATION.

Atch. 3

WITH REGARD TO THE UNFAIR CLAIMS PRACTICE ACT, THIS TENDS TO PROTECT AN INSURED OR CLAIMANT IN A GIVEN SITUATION, BUT PROVIDES NO LONG TERM CONTROL OVER UNSCRUPULOUS, UNETHICAL OR INCOMPETENT INSURANCE ADJUSTERS. LICENSING WOULD GIVE OUR INSURANCE DEPARTMENT THE FLEXIBILITY TO MAINTAIN SUPERVISION OVER THOSE INDIVIDUALS WHERE THERE ARE CONTINOUS PROBLEMS. SOME MEMBER OF THE COMMITTEE MIGHT WANT TO ASK THE INSURANCE DEPARTMENT HOW MANY ADJUSTERS HAVE BEEN FORCED TO CEASE WORKING IN KANSAS DUE TO CONSUMER COMPLAINTS.

IN CONCLUSION, I SUBMIT THAT IT IS IN THE BEST INTEREST OF THE KANSAS CONSUMER THAT HIS INSURANCE ADJUSTER OPERATE UNDER THE SAME GUIDELINES AND DEMONSTRATE THE SAME EXPERTISE AS HIS INSURANCE AGENT.

EXPLANATORY NOTES

This chart is current as of March 1982. It was compiled by reference to the applicable state statutes. Matters determined in a given state by regulation promulgated by the Insurance Commissioner are generally not included.

With respect to our citation of the definition of adjuster in each state, the underlining has been supplied to emphasize the information summarized in the cover chart.

Exemptions with respect to catastrophe losses generally also exempt adjusters from the licensing requirement with respect to either "a single loss" (Alaska) or "a particular loss of unique and unusual character" (Alabama). A few statutes also empower the Commissioner to waive licensing requirements whenever there is a shortage of adjusters. These provisions are not included.

It also should be noted that some states have statutorily defined exemptions from the examination requirement.

The terms "reciprocal" and "retaliatory" frequently appear under the category "non-resident." "Reciprocal" means that State A will extend a privilege to residents of State B if State B will extend same to residents of State A. "Retaliatory" means that State A will impose a requirement upon residents of State B to the extent that State B imposes same upon residents of State A.

STATE	STAFF ADJUSTER	INDEPENDENT ADJUSTER	PUBLIC ADJUSTER	CATASTROPHE	WRITTEN EXAM
Alabama	No	Yes	No	No	No mention
Alaska	No	Yes	No	No	Yes
Arizona	No	Yes	Yes	No	No mention
Arkansas	No	Yes	No	No	No mention
California	No	Yes	Yes	No mention	Commissioner may require
Colorado	Yes	Yes	Yes	No	Yes
Connecticut	Yes (Casualty only)	Yes (Casualty only)	Yes	No mention	Yes
Delaware	Yes	Yes	Prohibited	No mention	Yes
District of Columbia	--	--	--	--	--
Florida	Yes	Yes	Yes	Permit issued	Yes
Georgia	No Employer must file name	Yes	Yes	No	Yes
Hawaii	No	Yes	Yes	No	Yes
Idaho	No	Yes	No	No	Commissioner may require

STATE	STAFF ADJUSTER	INDEPENDENT ADJUSTER	PUBLIC ADJUSTER	CATASTROPHE	WRITTEN EXAM
Illinois	No	No	Yes	Not applicable	Director may require
Indiana	No	No	Yes	Not applicable	Yes
Iowa	--	--	--	--	--
Kansas	--	--	--	--	--
Kentucky	No	Yes	Yes	No	No mention
Louisiana	--	--	--	--	--
Maine	No Employer must file name	Yes	No	No	Yes
Maryland	No	No	Yes	Not applicable	Yes
Massachusetts	No	No	Yes	Not applicable	Commissioner may require
Michigan	No	Yes	Yes	No mention	Commissioner may require
Minnesota	No	Yes	Yes	Registration	Yes
Mississippi	No	Fee	Prohibited	No mention	No mention
Missouri	No	No	Yes	Not applicable	Yes

STATE	STAFF ADJUSTER	INDEPENDENT ADJUSTER	PUBLIC ADJUSTER	CATASTROPHE	WRITTEN EXAM
Montana	No	Yes	No	No	No mention
Nebraska	--	--	--	--	--
Nevada	No	Yes	Yes	No	Yes
New Hampshire	Yes	Yes	Yes	Temporary License	Yes
New Jersey	--	--	--	--	--
New Mexico	Yes	Yes	Yes (see text)	Temporary License	No mention
New York	No	Yes	Yes (controversial see text)	Temporary Permit	Yes
North Carolina	Yes	Yes	Yes	Registration	Yes
North Dakota	--	--	--	--	--
Ohio	No	No	Yes	Not applicable	Yes
Ok Lahoma	Yes	Yes	Yes	Temporary Permit	Yes
Oregon	No	Yes	Yes	Temporary Permit	Yes
Pennsylvania	No	No	Yes (solicitors also)	Not applicable	No mention

STATE	STAFF ADJUSTER	INDEPENDENT ADJUSTER	PUBLIC ADJUSTER	CATASTROPHE	WRITTEN EXAM
Puerto Rico	Yes	Yes	Yes	No (special auth. for wide- spread cat.)	Yes
Rhode Island	Yes except adj clm \$1000 or less	Yes	No	Temporary License	Yes
South Carolina	Yes	Yes	No	No (see text for qualifications)	Yes
South Dakota	--	--	--	--	--
Tennessee	--	--	--	--	--
Texas	Yes	Yes	No (see text)	Emergency License	Yes
Utah	Yes	Yes	Yes	Emergency License	Yes
Vermont	Yes	Yes	Yes	No	Yes
Virginia	--	--	--	--	--
Washington	No	Yes	Yes	No	Yes
West Virginia	--	--	--	--	--
Wisconsin	--	--	--	--	--
Wyoming	Yes	Yes	No	No	No mention

UNFAIR CLAIMS SETTLEMENT PRACTICES MODEL REGULATION

(As adopted by reference with Kansas amendments)

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Section 1. Authority.

Section 4(9) of the Unfair Trade Practices Act prohibits insurers doing business in the state from engaging in unfair claims settlement practices and provides that if any insurer performs any of the acts or practices proscribed by that section with such frequency as to indicate a general business practice, then those acts shall constitute an unfair or deceptive act or practice in the business of insurance.

Section 2. Scope.

This regulation defines certain minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claims settlement practices. This regulation applies to all persons and to all insurance policies and insurance contracts except policies of Workers' Compensation insurance. This regulation is not exclusive, and other acts, not herein specified, may also be deemed to be a violation of Section 4(9) of the Act.

Section 3. Definitions.

The definitions of "person" and of "insurance policy or insurance contract" contained in section 2 of the Unfair Trade Practice Act shall apply to this regulation and, in addition, where used in this regulation:

- (a) "Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim;
- (b) "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant;
- (c) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract;
- (d) "Insurer" means a person licensed to issue or who issues any insurance policy or insurance contract in this State.
- (e) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.
- (f) "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;
- (g) "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer; and

- (h) "Worker's Compensation" includes, but is not limited to, Longshoremen's and Harbor Worker's Compensation.

Section 4. File and Record Documentation.

The insurer's claim files shall be subject to examination by the (Commissioner) or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.

Section 5. Misrepresentation of Policy Provisions.

- (a) No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.
- (b) No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.
- (c) No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.
- (d) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.
- (e) No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.
- (f) No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

Section 6. Failure to Acknowledge Pertinent Communications.

- (a) Every insurer, upon receiving notification of a claim shall, within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.
- (b) Every insurer, upon receipt of any inquiry from the insurance department respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the department with an adequate response to the inquiry.
- (c) An appropriate reply shall be made within ten working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.
- (d) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within ten working days of notification of a claim shall constitute compliance with subsection (a) of this section.

Section 7. Standards for Prompt Investigation of Claims.

Every insurer shall complete investigation of a claim within thirty days after notification of claim, unless such investigation cannot reasonably be completed within such time.

Section 8. Standards for Prompt, Fair and Equitable Settlements Applicable to All Insurers

- (a) Within 5 working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.
- (b) If a claim is denied for reasons other than those described in paragraph (a) and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.
- (c) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five days from the date of the initial notification and every forty-five days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.
- (d) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.
- (e) Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty days and to third party claimants sixty days before the date on which such time limit may expire.
- (f) No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.
- (g) In the absence of applicable policy provisions to the contrary, an insurer shall not attempt to settle a loss with a first party claimant on the basis of a cash settlement which is less than the amount the insurer would pay if repairs were made, other than in total loss situations, unless such amount is agreed to by the insured.

Section 9. Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance.

- (a) When the 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 must apply:

- (1) The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, 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 policy. The offer and any rejection thereof must be documented in the claim file.
 - (2) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the 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. Such cost may be determined by
 - (A) The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area.
 - (B) One of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area.
 - (3) When a first party automobile total loss is settled on a basis which deviates from the methods described in subsections (a)(1) and (a)(2) of this section, the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deduction for salvage, must 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 the first party claimant.
- (b) Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.
 - (c) Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.
 - (d) Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.
 - (e) If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall 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.
 - (f) When the 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.
 - (g) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

~~(h) - The insurer shall 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 such amount is agreed to by the insured.~~

Legislative History (all references are to the Proceedings of the NAIC).

1976 Proc. II 367-370