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March 16, 2018

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Ms. Sue Bell  
Legal Secretary  
Commissioner of Insurance  
1818 East College Parkway, Suite 103  
Carson City, Nevada 89706



Re: LCB File No. R031-17

Dear Ms. Bell:

A regulation adopted by the Commissioner of Insurance has been filed today with the Secretary of State pursuant to NRS 233B.067 or 233B.0675, as appropriate. As provided in NRS 233B.070, this regulation becomes effective upon filing, unless otherwise indicated.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 6 of NRS 233B.070.

Sincerely,

A handwritten signature in blue ink that reads "W.B. Daines".

W.B. Daines  
Senior Deputy Legislative Counsel

R. Rene Yeckley  
Senate Legal Counsel and Bill Drafting Advisor

Brenda J. Erdoes  
Legislative Counsel

WBD/slj  
Enclosure

SECRETARY OF STATE  
FILING DATA

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2018 MAY 16 PM12:45

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**Form For Filing  
Administrative Regulations**

Agency

Dept. of Business and Industry

Division of Insurance

R031-17

FOR EMERGENCY  
REGULATIONS ONLY

Effective date \_\_\_\_\_

Expiration date \_\_\_\_\_

\_\_\_\_\_  
Governor's signature

Classification:     PROPOSED     ADOPTED BY AGENCY     EMERGENCY

Brief description of action Regulation concerning Automobile Insurance Claims

Authority citation other than 233B NRS 679B.130 and 686A.015

Notice date 1/3/18

Date of Adoption by Agency 3/6/18

Hearing date 2/9/18

**APPROVED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**LCB File No. R031-17**

**Effective May 16, 2018**

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}~~ :

*(1) 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 {*

~~—(e) 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 ~~[-~~

~~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.*



**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS  
INFORMATIONAL STATEMENT AS REQUIRED BY NRS 233B.066**

LCB FILE NO. R031-17

The following statement is submitted by the State of Nevada, Department of Business and Industry, Division of Insurance (“Division”) for adopted amendments to Nevada Administrative Code (“NAC”) Chapter 686A.

1. A clear and concise explanation of the need for the adopted regulation.

*The purpose of this regulation is to enhance existing regulation NAC 686A.680 by making it applicable to all total loss claims – first-party and third-party. The regulation was initially enacted in 1980, and some of the language in the existing text is confusing. There are portions of language that appear to indicate that the regulation is applicable only to first-party total loss claims. There are other portions which appear to apply to all total loss claims. The Division often fields inquiries from insurance companies regarding the applicability of the regulation to third-party total loss claims. Based on the Division’s opinions, the practice in the insurance industry already applies this regulation to third-party total loss claims. The proposed change to NAC 686A.680 will formalize this practice. ✓*

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

- (a) A description of how public comment was solicited:

*Public comment was solicited by e-mailing the proposed regulation, notice(s) of workshop, notice(s) of intent to act upon the regulation, and small business impact statement to persons on the Division’s mailing list requesting notification of proposed regulations. The documents were also made available on the website of the Division, <http://doi.nv.gov/>, mailed to the main library for each county in Nevada, and posted at the following locations: ✓*

*Nevada Division of Insurance  
1818 East College Parkway, Suite 103  
Carson City, Nevada 89706*

*Nevada Division of Insurance  
3300 West Sahara Avenue, Suite 275  
Las Vegas, Nevada 89102*

*Legislative Building  
401 South Carson Street  
Carson City, Nevada 89701*

*Nevada State Business Center  
3300 West Sahara Avenue  
Las Vegas, Nevada 89102*

*Blasdel Building  
209 East Musser Street  
Carson City, Nevada 89701*

*Grant Sawyer Building  
555 East Washington Avenue  
Las Vegas, Nevada 89101*

Capitol Building  
101 North Carson Street  
Carson City, Nevada 89701

Nevada Department of Employment,  
Training and Rehabilitation  
2800 E. Saint Louis Avenue  
Las Vegas, Nevada 89104

*Public comment was also solicited at the workshop held on October 25, 2017, and at the hearing held on February 9, 2018. The public workshop and hearing took place at the offices of the Division, 1818 East College Parkway, Carson City, Nevada 89706, with simultaneous videoconferencing to the Nevada State Business Center, 3300 West Sahara Avenue, Las Vegas, Nevada 89102. ✓*

(b) A summary of the public response:

*Prior to and at the workshop, the Division received comments from two vehicle valuation companies. They expressed concerns with a previous version of the regulation that referred to published price guides rather than a statistical valuation source. They also expressed a need to sometimes expand beyond the 90-day timeframe and local market area to find comparable vehicles. The Division worked with them to amend the regulation to address their concerns.*

*The Division received three comments from the insurance industry. In addition to the issues raised by the vehicle valuation companies, industry expressed concern with expanding the regulation to apply to third-party as well as first-party claims; asked for clarification regarding an insurer taking into account the reduced value caused by inspection; asked for clarification of taxes, license, and fees; and raised concerns regarding the specific language for vehicle valuation, statistical valuation source, and deduction of salvage.*

*Regarding expanding the language to third-party losses, the Division believes this is simply formalizing the long-standing position of the Division and current industry practice. While insurers can have contractual limitations on the settlement of first-party claims, they are required to make third-party claimants whole. Because of this, the claims standards for third-party claims should be at least as high as those for first-party claims.*

*Regarding the other comments, the Division provided the requested clarification. It explained that one portion of the language being asked about was NAIC model language. It also indicated that language requested by industry in a written comment was already present in the regulation.*

*The Division received one comment from a representative of the collision repair industry supporting the regulation but requesting that it go further to curb certain insurance-industry practices such as deducting towing and storage costs from settlements. The Division asked him to provide whatever information he had so it could determine the proper response such as enforcement of existing regulation or further regulations in the future. ✓*

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 2(b) above reflects the comments and testimony that transpired with regard to regulation R031-17. A copy of said summary may be obtained by contacting Rajat Jain at (775) 687-0700 or [rjain@doi.nv.gov](mailto:rjain@doi.nv.gov). This summary will also be made available by e-mail request to [insinfo@doi.nv.gov](mailto:insinfo@doi.nv.gov). ✓

3. The number of persons who:

- (a) Attended the hearing: 15
- (b) Testified at the hearing: 4
- (c) Submitted to the agency written statements: 4 ✓

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3 (b) and (c), as provided to the agency:

Testified at the hearing:

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address
Erin Summers	Division of Insurance	1818 E. College Pkwy. Suite 103 Carson City NV 89706	(775) 687-0765	<a href="mailto:esummers@doi.nv.gov">esummers@doi.nv.gov</a>
Gennady Stolyarov	Division of Insurance	1818 E. College Pkwy. Suite 103 Carson City NV 89706	(775) 687-0766	<a href="mailto:gstolyarov@doi.nv.gov">gstolyarov@doi.nv.gov</a>
Jesse Wadhams	Fennemore Craig			<a href="mailto:jessew@fclaw.com">jessew@fclaw.com</a>
Brian Kelley	Nevada Collision Industry Association	2475 E. Sahara Ave. Las Vegas NV 89104	(702) 327-2595 (702) 897-1320	<a href="mailto:brian@velocitycclv.com">brian@velocitycclv.com</a>

Submitted to the agency written statements:

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address
Jennifer Yengoyan	CCC Information Services Inc.	222 Merchandise Mart Suite 900 Chicago IL 60654-1105	(800) 621-8070	<a href="mailto:jyengoyan@ccis.com">jyengoyan@ccis.com</a>
Diane Klund	Audatex	1301 Solana Blvd. Bldg. 2 Suite 2100 Westlake TX 76262		<a href="mailto:Diane.Klund@audatex.com">Diane.Klund@audatex.com</a>
Mark Sektman	Property Casualty Insurers of America	1415 L St. Suite 670 Sacramento CA 95814	(916) 440-1115	<a href="mailto:Mark.sektman@acicnet.org">Mark.sektman@acicnet.org</a>
Christian Rataj	National Association of Mutual Insurance Companies	3601 Vincennes Road Indianapolis IN 46268	(317) 875-5250	<a href="mailto:crataj@namic.org">crataj@namic.org</a>

5. A description of how comment was solicited from affected businesses, a summary of their responses, and an explanation of how other interested persons may obtain a copy of the summary.

*Comments were solicited from affected businesses in the same manner as they were solicited from the public. Please see the description, summary and explanation provided above in response to question #2. ✓*

6. If after consideration of public comment the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

*The Division worked with industry in the workshop process to amend or clarify the regulation to address their concerns. The remaining disagreement between the Division and industry is the expansion of the regulation to apply to third-party claims.*

*The existing language of NAC 686A.680 is unclear as there are portions of the language indicating the regulation is only applicable to first-party loss claims, while other portions appear to apply to the settlement of all total loss claims. It has been the long-standing position of the Division that since insurers are required to make third-party claimants whole, the standards set forth in NAC 686A.680 are also applicable to third-party total loss claims. The Division believes this is already the applicable practice in the insurance industry, and this proposed regulation will formalize this practice.*

*Further, pursuant to NRS 686A.310, it is an unfair trade practice to compel insureds to institute litigation to recover amounts due under the policy by offering substantially less than the amounts ultimately recovered. As most claims are not ultimately decided in a court of law, it is appropriate for the Division to establish claims standards.*

*For these reasons the Division is adopting the regulation without change. ✓*

7. (a) The estimated economic effect of the adopted regulation on the business which it is to regulate:

(1) Both adverse and beneficial effects: *Will result in smoother claims settlement practices for third-party claims without incurring additional loss adjustment expenses.*

(2) Both immediate and long-term effects: *Will result in smoother claims settlement practices for third-party claims without incurring additional loss adjustment expenses.*

(b) The estimated economic effect of the adopted regulation on the public:

(1) Both adverse and beneficial effects: *Will benefit from getting fair and accurate compensation during claims settlement to allow them to purchase a replacement vehicle.*

(2) Both immediate and long-term effects: *Will benefit from getting fair and accurate compensation during claims settlement to allow them to purchase a replacement vehicle. ✓*

8. The estimated cost to the agency for enforcement of the adopted regulation.

*None. ✓*

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

*Not applicable, as there is no overlap or duplication. ✓*

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

*Not applicable, as there are not more stringent provisions. ✓*

11. If the regulation establishes a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

*Not applicable, as this regulation does not establish a new fee or increase an existing fee. ✓*