

**Title 3. Commerce, Community, and Economic Development.**

**Part 2. Division of Insurance.**

**Chapter 26. Trade Practices.**

3 AAC 26.030 is amended by adding new subsections to read:

(b) A person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a claim under any type of insurance shall respond to inquiries from the director related to the claim within 10 days from the date of the director's inquiry. The response must include all documentation within the person's possession, custody, or control, or in the possession, custody, or control of other persons or entities acting on behalf of that person in relation to the claim, that is responsive to the director's inquiry.

(c) The director may assess a penalty under AS 21.36.910 of not more than \$2,500 for each violation or \$25,000 for engaging in a general business practice that violates (b) of this section. (Eff. 5/6/89, Register 110; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 21.06.090            AS 21.36.090            AS 21.36.410  
                 AS 21.06.120            AS 21.36.125            **AS 21.36.910**  
                 AS 21.06.130

The introductory language of 3 AAC 26.080(a) is amended to read:

(a) A [ANY] person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a first-party **or third-party** motor vehicle claim **shall** [MUST]:

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3 AAC 26.080(a)(1)(A) is amended to read:

(A) offer a comparable and available replacement motor vehicle, with all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership of the motor vehicle paid, at no cost to the [FIRST PARTY] claimant other than the deductible amount, if any, as stated in the coverage; the offer of a replacement motor vehicle shall be made in writing if rejected by the [FIRST PARTY] claimant; or

3 AAC 26.080(a)(1)(B)(i) is amended to read:

(i) the cost of a comparable motor vehicle in the local market area to the claimant, if that motor vehicle is available in that area **or was available within the last 90 days**; or

3 AAC 26.080(a)(1)(B)(ii) is amended to read:

(ii) the average of two or more cost quotations obtained for a comparable motor vehicle from two or more **licensed** [QUALIFIED] dealers located within the local market area, if a comparable motor vehicle is not available in that area; or

3 AAC 26.080(a)(1)(B)(iii) is repealed and readopted to read:

(iii) a source for determining statistically valid fair market values under (i) of this section;

3 AAC 26.080(a)(1)(B) is amended by adding a new sub-subparagraph to read:

(iv) if (i) – (iii) of this subparagraph do not identify any comparable vehicles, with the consent of the claimant, the average retail value of a comparable motor vehicle may be obtained from two industry sources published on a regular basis, at least once every two months, that contains the average retail, wholesale and finance values for all makes and models for at least each of the last five model years, as well as a listing for all major options;

3 AAC 26.080(a)(2) is amended to read:

(2) provide to a [FIRST-PARTY] claimant a reasonable written explanation of the valuation of damages to the motor vehicle;

3 AAC 26.080(b)(1) is repealed:

(1) repealed \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_;

3 AAC 26.080 is amended by adding new subsections to read:

(h) An insurer may reduce the value of the motor vehicle on the basis of betterment and any deductions must be measurable, itemized, have a specific dollar amount and be documented in the claim file. Betterment deductions may be made only if the deductions reflect

(1) a measurable decrease in market value attributable to the poorer condition of the vehicle or damage to the vehicle that existed prior to the current claim;

(2) wear and tear or rust considering the overall age of the vehicle limited to \$1,000;

(3) missing parts and the deduction is not more than the replacement cost of the part or parts.

(i) A source for determining fair market values under (a)(1)(B)(iii) of this section must meet the following criteria:

(1) the source must give primary consideration to the values of comparable vehicles in the local market area that are currently available or were available within the last 90 days;

(2) the source must produce local market areas values for at least 85 percent of all makes and models for the last 15 model years taking into account the values of all major options for these vehicles;

(3) if no comparable vehicles are found in the local market area within the last 90 days, the search may be expanded up to the last 180 days in 30 day increments until two or more comparable vehicles are located;

(4) if no comparable vehicles are found in the local market area after expanding the search period as provided for in (3) of this subsection, the search area may be expanded to areas surrounding the local market area that include two additional licensed dealers for vehicles that are currently available or were available within the last 90 days; if no comparable vehicles are found in the expanded search area, the search area or time period in 30 day increments may be expanded further with the agreement of the claimant.

(j) If the claimant notifies the insurer within 60 days of receipt of the claim payment that the claimant cannot purchase a comparable vehicle for the amount determined under (a)(1)(B) of this section, the insurer shall, if the appraisal section of the policy has not been exercised, reopen its claim file and determine a new settlement amount using one of the following procedures:

(1) the insurer may locate a comparable vehicle available through a licensed dealer for the value determined by the insurer at the time of settlement, along with all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership of the motor vehicle, at no cost to the claimant other than the deductible amount, if any, as stated in the coverage;

(2) if the claimant has located a comparable vehicle of like kind and quality, the insurer may

(A) pay the difference between the value determined by the insurer at the time of settlement and the cost of the comparable vehicle, or

(B) negotiate and effect the purchase of this vehicle for the claimant;

(3) for a first-party claimant, conclude the loss settlement using the appraisal provisions of the policy.

(k) An insurer is not required to take action under (j) of this section if

(1) the insurer provided documentation to the claimant at the time of settlement of the location of a specific comparable vehicle available for purchase for the agreed settlement amount and the claimant did not purchase this vehicle within five business days after the date final payment is sent to the claimant, lienholder, or both; or

(2) the appraisal section of the policy has been exercised.

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(l) If comparable vehicles cannot be found under the procedures described in this section, the insurer may consider vehicles by other manufacturers that otherwise meet the definition of a comparable vehicle in the valuation processes described in this section.

(m) This section does not prohibit an insurer from issuing a stated policy insuring against physical damage, where the amount of damages to be paid in the event of a total loss is a specified dollar amount. (Eff. 5/6/89, Register 110; am \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 21.06.090 AS 21.36.125

The introductory language of 3 AAC 26.090(a) is amended to read:

(a) A [ANY] person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a first-party **or third-party** property claim shall:

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3 AAC 26.090(a)(1)(A) is amended to read:

(A) offer specific comparable and available replacement property with all applicable taxes, charges, and other fees incident to the transfer of ownership of the property at no cost to the claimant other than the deductible amount, if any, as stated in the coverage; the offer of replacement property shall be in writing if rejected by the [FIRST-PARTY] claimant.

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3 AAC 26.090(a)(1)(B)(i) is amended to read:

(i) the cost of comparable property in the local market area to the claimant, if such property is available in that area **or was available within the last 90 days**; or

3 AAC 26.090(a)(1)(B)(ii) is amended to read:

(ii) the average of two or more cost quotations obtained for comparable property from two or more **licensed** [QUALIFIED] dealers, suppliers or contractors located within the local market area, if comparable property is not available in that area. [; OR]

3 AAC 26.090(a)(1)(B)(iii) is repealed:

(iii) repealed \_\_\_\_/\_\_\_\_/\_\_\_\_;

3 AAC 26.090(a)(2) is amended to read:

(2) provide to a [FIRST-PARTY] claimant a reasonable written explanation of the valuation of the damages to the property;

3 AAC 26.090(b)(1) is repealed:

(1) repealed \_\_\_\_/\_\_\_\_/\_\_\_\_;

3 AAC 26.090 is amended by adding new subsections to read:

(g) If no comparable property is found in the local market area, the search may be expanded up to the last 180 days in 30 day increments until a comparable property is located.

(h) If no comparable property is found in the local market area after expanding the search period as provided for in (g) of this section, the search area may be expanded to areas surrounding the local market area that include two additional licensed dealers, suppliers or contractors for property that is currently available or that was available within the last 90 days.

(i) If no comparable property is found in the expanded search area or time period allowed under (g) and (h) of this section, the search area may be further expanded or the time period may be expanded in 30 day increments.

(j) If the claimant notifies the insurer within 60 days of receipt of the claim payment that the claimant cannot purchase replacement property for the amount determined under (a)(1)(B) of this section, the insurer shall, if the appraisal section of the policy has not been exercised, reopen its claim file and determine a new settlement amount using one of the following procedures:

(1) the insurer may locate comparable property through a licensed dealer, supplier or contractor for the value determined by the insurer at the time of settlement;

(2) if the claimant has located comparable property of like kind and quality, the insurer may

(A) pay the difference between the value determined by the insurer at the time of settlement and the cost of the comparable property, or

(B) negotiate and effect the purchase of the property for the claimant;

(3) for a first-party claimant, conclude the loss settlement using the appraisal provisions of the policy.

(k) An insurer is not required to take action under (j) of this section if

(1) the insurer provided documentation to the claimant at the time of settlement of the location of specific comparable property available for purchase for the agreed settlement amount and the claimant did not purchase this property within five business days after the date final payment is sent to the claimant, lienholder or both; or

(2) the appraisal section of the policy has been exercised.

(l) Any person adjusting, negotiating or settling a property claim on the basis of replacement cost shall

(1) include in the repair or replacement of the property or part of the property any consequential physical damage incurred in making the repair or replacement that is not otherwise excluded by the policy. The claimant shall not have to pay for betterment or any other cost except for the applicable deductible;

(2) for a loss that requires replacement of property and the replacement property does not match in quality, color or size, replace the property in the area to provide for a reasonably uniform appearance. This applies to interior and exterior losses. The claimant shall not have to pay for betterment or any other cost except for the applicable deductible. (Eff.

5/6/89, Register 110; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 21.06.090 AS 21.36.125

3 AAC 26.300(7) is amended to read:

(7) "local market area" means the geographical area, in the closest proximity to the claimant's residence, in which two or more **licensed** [QUALIFIED] dealers are located;

3 AAC 26.300 is amended by adding new paragraphs to read:

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(13) "comparable motor vehicle" means a motor vehicle by the same manufacturer, same or newer model year, similar body style, similar options and similar mileage as the loss vehicle and in as good or better condition.

(14) "similar mileage" means having mileage which does not exceed the mileage of the loss vehicle on the date of loss by more than 4,000 miles or 10 percent of the mileage of the loss vehicle, whichever is greater. (Eff. 5/6/89, Register 110; am 4/20/97, Register 142; am 9/15/2004, Register 171; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:**    AS 21.06.090            AS 21.36.125