STATE OF NEW YORK

810

2019-2020 Regular Sessions

IN SENATE

January 9, 2019

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to submission by an insured of vehicle photographs for purposes of the issuance or renewal of a policy of automobile physical damage insurance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subsections (e), (f) and (h) of section 3411 of the insurance law, subsections (e) and (f) as added by chapter 805 of the laws of 1984, are amended and a new subsection (o) is added to read as follows:

(e) For a renewal of a policy referred to in subsection (d) of this section, an insurer may require, as a condition of such renewal, that the automobile be made available for inspection **by the insurer or the insurer's authorized representative, or by the insured pursuant to subsection (o) of this section**.

(f) If an insurer requests an inspection pursuant to subsection (e) of this section, the insured shall make the automobile available for inspection by the insurer **or the insurer's authorized representative**, upon reasonable notice. **The insurer may also, upon reasonable notice, allow the insured to complete the automobile inspection pursuant to subsection (o) of this section.** If the insured**, upon reasonable notice,** fails to make the automobile available for inspection **by the insurer or the insurer's authorized representative, or by completing the inspection pursuant to subsection (o) of this section**, the insurer may refuse to continue such physical damage coverage.

(h) Where an inspection is made pursuant to this section, it shall be conducted by the insurer or [~~its~~] **the insurer's** authorized representative**, or by the insured pursuant to subsection (o) of this section,** and shall be recorded on a form prescribed by the superintendent. Such form shall be retained by the insurer with its policy records for such

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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insured, and a copy of such form shall be made available to the insured upon request.

(o) (1) An insurer may, at its option, comply with subsections (d) and (e) of this section by allowing the insured to self-inspect the insured vehicle and self-submit documentation establishing the inspection, consistent with the requirements of this subsection. An insurer is not required to comply with subsections (d) and (e) of this section by allowing the insured to self-inspect the insured vehicle.

(2) The self-inspection option available pursuant to this subsection shall only apply to vehicles insured by personal lines insurance.

(3) The self-inspection option available pursuant to this subsection shall not apply to vehicles insured by the New York Automobile Insurance Plan.

(4) To perform an automobile inspection pursuant to this subsection, the insured shall, at minimum, submit the following documents to the insurer or the insurer's authorized representative:

(i) digital photographs of the insured vehicle; and

(ii) the signed, completed inspection form referenced in subsection (h) of this section.

(5) An automobile inspection performed pursuant to this subsection is deemed complete only when the insurer or its authorized representative has received both the signed, completed inspection form and the required digital photographs.

(6) Each digital photograph submitted by the insured shall be in color, clear, and must include metadata that indicates the date and time that the photograph was taken.

(7) Each digital photograph submitted by the insured shall be in .jpeg format, the resolution must he no less than 2048 x 1536 pixels, and the file size per photo must be no less than two hundred kilobytes nor greater than five gigabytes.

(8) Each digital photograph submitted by the insured shall be taken no more than ten calendar days prior to the date written on the inspection form, and no more than fourteen calendar days after the date written on the inspection form. The included metadata shall confirm that each digital photograph was taken no more than ten calendar days prior to the date written on the inspection form, and no more than fourteen calendar days after the date written on the inspection form.

(9) The insured must certify the accuracy and completeness of the information recorded on the inspection form prescribed by the super-intendent, under penalty of perjury. Any knowing misrepresentation shall constitute a "fraudulent insurance act" as defined in section four hundred three of this chapter.

(10) The insured must certify the authenticity of the signature on the inspection report prescribed by the superintendent, under penalty of perjury. In accordance with section three hundred four of the state technology law, an electronic signature is permissible.

(11) The insurer and/or its authorized representative shall take reasonable, appropriate steps necessary to ensure the security and integrity of data that the insured submits pursuant to this subsection.

(12) If the insured chooses to sign the inspection form with an elec-tronic signature, the insurer and/or its authorized representative shall take reasonable, appropriate steps necessary to ensure the security of the electronic signature and verify its authenticity.

(13) The insurer and/or its authorized representative shall establish reasonable, appropriate procedures necessary to ensure that once inspection forms are signed and submitted, they are, at minimum, stored

electronically, in a secure fashion, and are retained by the insurer and/or its authorized representative for a minimum period of time to be determined by the superintendent.

(14) If, upon inspection of the insured's digital photographs, the insurer finds that the insured has failed to comply with the photograph submission requirements provided in this subsection or in the applicable regulations, the insurer shall request further inspection of the vehicle by the insurer or its authorized representative. Further self-inspection of the vehicle pursuant to this subsection is not permitted, and any subsequent inspection still must be completed no more than fourteen calendar days after the effective date of coverage. The insurer shall have the right to refuse to continue physical damage coverage until the insured completes the subsequent inspection.

(15) If, upon inspection of the insured's digital photographs, the insurer identifies inaccuracies or errors in the information recorded on the inspection form, the insurer shall request further inspection of the automobile by the insurer or its authorized representative. Further self-inspection of the vehicle pursuant to this subsection is not permitted. The insurer shall have the right to refuse to continue physical damage coverage until the insured completes the subsequent inspection or inspections.

(16) If, upon inspection of the insured's digital photographs and/or review of the inspection form prescribed by the superintendent, the insurer identifies evidence of a fraudulent insurance act, the insurer may cancel or rescind the insured's physical damage coverage, and may report such evidence of a fraudulent insurance act to law enforcement authorities. In connection with providing the inspection form, the insurer shall also issue a notice to the insured containing the language prescribed in subsection (d) of section four hundred three of this chapter.

(17) The superintendent may promulgate additional regulations specific to this subsection.

(18) Unless the superintendent promulgates additional regulations specific to this subsection, in addition to satisfying the requirements of this subsection, the insurer and the insured shall also comply with the applicable inspection standards prescribed pursuant to part sixty-seven of title eleven of the New York codes, rules and regulations except that

(i) the insured must only submit photographs to the insurer or its authorized representative electronically using digital media; and

(ii) if the insured electronically transmits the signed, completed inspection report to the insurer or its authorized representative, the insured must use an electronic signature.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.