

ALERTS**Fast-Moving Texas Insurance Law Changes: Starting Sept. 1, New Insurance Law Limits What A Policyholder May Recover**

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House Bill 1774, passed by the Texas legislature in May, becomes law on Sept. 1 – just as Texans begin to assess the damages wrought by Hurricane Harvey. This law amends the Texas Insurance Code in a number of important ways, especially regarding what a policyholder can recover when an insurer doesn't promptly pay a claim.

The new law applies to claims (not lawsuits) made on or after Sept. 1. A Texas company that owns property damaged in this storm should consider submitting a claim by Aug. 31.

The new law makes these important changes:

1. **Waiting period.** Starting with claims made as of Sept. 1, a policyholder generally will have to wait 61 days after giving notice to the insurance company before filing a lawsuit alleging failure to promptly pay the claim. Courts will be required to dismiss lawsuits that don't comply with this waiting period.
2. **Prejudgment interest.** Currently, a policyholder who prevails in a lawsuit alleging the insurance company failed to promptly pay the claim is entitled to prejudgment interest at 18 percent. Under the new law, the rate will float between 10 percent and 20 percent, depending on the Federal Reserve System's current prime rate.
3. **Attorneys' fees.** Under the current law, the prevailing policyholder is entitled to an award of reasonable attorneys' fees. The new law creates a complex sliding scale where the award of reasonable and necessary attorneys' fees depends on how closely the judgment matches the amount of loss claimed by the policyholder. If the claim turns out to be more than 80 percent of the judgment, the policyholder gets all fees; if less than 20 percent, the policyholder gets no fees.

While the waiting period will adversely impact some policyholders, the principal features of this new law are the prejudgment interest and attorneys' fees components. The prejudgment interest rate will now be loosely tied to market rates. Because the prime rate is currently near historic lows, this will translate into a 10 percent prejudgment interest rate under the new law – or a drop of nearly half from the rate under the current law.

The new attorneys' fees rules were promoted as a response to a trend of supposedly frivolous hailstorm damages claims. In practice, however, the fees rules will penalize the policyholder that guesses wrong about his or her loss claim but still has a legitimate grievance about the insurance

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company's conduct in paying the claim. Where an insurer believes the policyholder has overvalued his or her claim, it will have less of an incentive under the new law to comply with Texas' prompt payment laws.

Hurdles for Out-of-State Companies

It may be a little more complicated for an out-of-state company with operations in Texas. Typically, the law of the state where the policyholder purchases the policy – usually the state in which the company has its principal place of business – governs how the scope of coverage will be interpreted. When, say, an Alabama policyholder buys a policy covering its properties there, as well as its properties in Texas, it can expect that if there is a dispute about the extent of coverage (like whether a loss is caused by covered wind or non-covered surface water), then Alabama law will apply. If Alabama law governs how the policy is interpreted, then the new Texas statute would not cut back the Alabama policyholder's rights in any way.

But when an out-of-state policyholder has to sue a carrier to enforce a claim for loss of Texas property, a carrier might argue that HB 1774 applies to limit the policyholder's remedies – even though the policy was negotiated, bought and paid for outside Texas. To head off such an argument (which is rebuttable on other grounds), an out-of-state company with Texas operations should consider moving quickly to file its claim before the Sept. 1 effective date.

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