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 Special Contributors

## Legislature restricts rights of insurance policyholders

Texas lawmakers are on the fast track to restrict policyholders' rights when their insurance companies fail to pay property insurance claims arising out of weather events, such as storms involving heavy winds and hail.

Now that the Texas Senate has approved House Bill 1774, Gov. Greg Abbott is almost sure to sign it. Unfortunately, this will unleash unexpected and unpleasant surprises for Texas businesses and other insurance policyholders.

Most significantly, this harmful piece of legislation is designed to cut back on penalties that are intended to deter bad-faith conduct by insurance companies. It also aims to empower policyholders to fight back when their claims are denied, delayed or handled in inappropriate ways.

The new legislation seeks to diminish these substantial penalties that previous Texas Legislatures created to deter such bad-faith conduct by insurance companies. Interest that can be awarded by Texas courts for certain property insurance claims would drop from 18 percent to 10 percent. This is a dramatic reduction in the damages that can be awarded against insurers – and the impact must be understood as encouraging abuse and delay by insurers.

The legislation would also restrict policyholders' rights to recover attorney's fees unless they complied with complicated notification and pre-suit demand requirements. Even if an insurance company attempts to low-ball a payment for years – and an attorney is required to file suit to obtain a full payment – the insurance company may be relieved of responsibility for the policyholder's fees. Under the proposed law, this will depend on a comparison between the amount demanded and the amount awarded, or whether the policyholder complied with the notification and



Charlotte Hammacher's truck was damaged by falling tree limbs from an overnight storm in April 2016. A new bill limits punishments for insurers who delay payments. DEBORAH CANNON / AMERICAN STATESMAN

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demand requirements.

This provision has potential to harm policyholders who do not recognize – and comply with – the new notice and demand requirements. Worse, it perversely discourages policyholders from pursuing claims that could be more difficult to prove at the outset of the dispute – or settling portions of claims during the period between a demand and a final resolution.

This so-called "tort reform" is far broader than its proponents have suggested in their public statements. For example, Abbott and others have advocated for the bill based on alleged abuse of "hailstorm" claims by attorneys primarily representing homeowners, stating that "hailstorm litigation is the newest form of lawsuit abuse."

However, the new bill does

not appear to be restricted to hailstorm claims asserted by homeowners. Indeed, the most recent text applies to a first-party claim filed by any policyholder for property damage caused in whole, or in part, by "forces of nature." This can include damages suffered by Texas businesses – not just by hailstorms, but also earthquakes, ground movement, wildfires, floods, tornadoes, lightning, hurricanes, wind, rain and snow.

Texas HB 1774 is woefully overinclusive in its reach and would impact insurance claims that have nothing to do with hail damage to residential properties. Worse, it is likely to harm individuals and Texas businesses that suffer property damage or business interruption losses with a wide variety of actual or potential causes. By removing several of the most reliable tools Texas policyholders have previously used to protect themselves from abusive behavior by insurers, this new law is a major setback.

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