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*Insurance, Licensing and Regulation*

## New Texas law affects property damage lawsuits

*November 1* — Recent flooding and property damage caused by Hurricane Harvey in Houston and other Gulf Coast communities have drawn public attention to the potential impact of [HB 1774](#) by G. Bonnen, a new law that revises state statutes governing lawsuits on weather-related property insurance claims. The bill took effect September 1, shortly after the hurricane made landfall, and affects property damage claims and lawsuits filed after that date.

The bill establishes a new requirement for a person or company with property insurance to give an insurance carrier at least 61 days' notice before filing a lawsuit against the carrier for a natural disaster-related property damage claim. Within 30 days of receiving the required notice, an insurer may request to inspect, photograph, or evaluate, in a reasonable manner and at a reasonable time, the property subject to the claim. The bill applies both to commercial and personal property insurance but [not](#) to Texas Windstorm Insurance Association (TWIA) policies or policies issued by the National Flood Insurance Program. Texas law currently requires the same notice for lawsuits related to unfair methods of competition and unfair or deceptive acts or practices in the insurance industry.

HB 1774 also changes the method of determining the amount of attorney's fees and interest that a policyholder may be awarded from a lawsuit. Texas law previously required an insurance carrier that violated [Insurance Code, ch. 542](#) regulations for processing and settling claims for property damage to pay the

policyholder the amount of the claim, interest at an annual rate of 18 percent, and reasonable attorney's fees. HB 1774 creates a new formula for determining the attorney's fees a court may award a claimant and specifies a new method for calculating the post-judgment interest rate on claim damage awards.

**Supporters of HB 1774** said the bill would mitigate a growing trend of frivolous severe-weather-damage lawsuits. They say some lawyers filing such lawsuits have taken advantage of hard-working Texans who file property damage claims after storms like Hurricane Harvey, causing the number of weather-related lawsuits to rise sharply in Texas since 2012. Supporters also said that by limiting frivolous lawsuits in Texas, the bill could reduce the price of homeowners' insurance for policyholders by lowering the costs associated with unnecessary, expensive litigation for insurance companies.

**Critics of HB 1774** said requiring 61 days' notice before filing a lawsuit could be especially burdensome in extreme weather situations in which damage can worsen over time. They said the bill also could restrict the ability of policyholders to recoup the costs of contesting a legitimate, underpaid property damage claim, including attorneys' fees, and could dissuade Texans from doing so. Denying or underpaying claims may be especially likely in an extreme weather event that affects a large number of people, critics said.

— Lauren Ames

## General Government

## Voting procedures from 2016 in effect for November elections

[November 6](#) — The state's voter identification policies used in the 2016 presidential election will remain in effect for the Nov. 7 election, based on a federal appeals court ruling in September that said it would minimize confusion among voters and election officials.

The 5th Circuit Court of Appeals' [ruling](#) said the temporary policies will stay in effect until the court can hear oral arguments on a new law enacted this year by the 85th Legislature, [SB 5](#) by Huffman. The appeals court ruling stayed an August district court ruling that had blocked Texas from implementing SB 5, which the district court said perpetuated discriminatory features of [SB 14](#) by Fraser, the state's voter ID law enacted in 2011. SB 5 was enacted in response to what courts had said were discriminatory aspects of SB 14.

Under the [temporary policies](#), voters who appear on the official list of registered voters may cast a regular ballot if they present one of the approved forms of ID that is not more than four years expired. This differs from the law established under SB 14, which allows a voter's ID to be no more than 60 days

expired. Voters who have an accepted form of photo ID but did not bring it to the polling place may cast a provisional ballot and bring the ID to the county voter registrar within six days after the election for their vote to be counted.

Voters without one of the seven approved documents may cast a regular ballot if they present a valid voter registration certificate, an original certified birth certificate, current utility bill, bank statement, government check, paycheck, or other government document with the voter's name and address. These voters also must sign a reasonable impediment declaration, which specifies why they were prevented from getting one of the approved forms of photo ID.

The recently enacted SB 5 closely mirrors the temporary rules established in 2016 but adds the penalty of perjury for providing false information on the reasonable impediment declaration. SB 5 is set to take effect January 1, 2018. The case remains under consideration by the appeals court and oral arguments are scheduled to start in early December.

— Rita Barr

## Transportation

## Texas paves the way for automated vehicles

[November 13](#) — With the enactment earlier this year of SB 2205 by Hancock and HB 1791 by Pickett, Texas joined 20 other states that expressly regulate automated vehicles. Until then, Texas law had not addressed automated vehicles directly, leaving it ambiguous how certain laws referencing vehicle operators applied.

Federal governance is limited to non-regulatory guidance, although the U.S. House of Representatives in September passed [a bill](#), currently pending in the Senate, that would require federal rules on safety and data security and would preempt state regulations on automated vehicle design.

All vehicles generally are [classified](#) into one of five or six levels of automation, from level zero, which includes vehicles without features such as cruise control or traction control, to levels four or five, which allow for no human involvement beyond instructing the car where to go.

[HB 1791](#), effective [May 18](#), removed barriers to the use of connected braking systems, also known as truck platooning, which falls into levels one and two of automation. Trucks form

platoons by falling into a line on a highway. Connected braking technology then electronically coordinates with the truck in the front of the line to change the speed of the trucks in the platoon, enabling the safe following distance to be reduced and increasing fuel economy as the trucks draft behind one another.

A more broadly applicable bill on automated driving systems, [SB 2205](#), effective [Sept. 1](#), explicitly allows vehicles with the highest level of automation to use highways with or without a human driver if the car is compliant with traffic laws and with insurance and registration requirements and if it can record certain data, including location, velocity, and braking and steering performance. Vehicles at the highest level of automation are, for the most part, governed exclusively by SB 2205 and exempt from certain other laws, including local laws specific to automated vehicles.

Under the new bill, the owner of an automated driving system is responsible for violations of any traffic laws, whether or not the owner was physically present in the vehicle at the time of the violation.

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**Supporters of SB 2205** say the bill provides manufacturers the regulatory certainty needed to test automated vehicles on Texas roads and preserves public safety. They say it will help manufacturers develop the technology with a full understanding of regulatory obligations while avoiding onerous or detrimental requirements that would inhibit the technology as it develops. Automated vehicles have proven thus far to be safer than traditional cars and should become even safer as the technology evolves.

**Critics of SB 2205** say the bill leaves many questions unanswered and should have been more expansive to provide clarity to state agencies, insurance companies, and regulators. While the bill clarifies that the driver of the vehicle is considered to be the owner of the automated driving system, it also should have addressed civil liability and data security. For instance, it could have increased the required liability limit for insurance coverage on automated vehicles beyond that required of ordinary cars or implemented penalties for hacking automated vehicles with the intent to harm.

— *Anthony Severin*