

Amend CSSB 279 by adding an appropriately numbered ARTICLE and renumbering the subsequent ARTICLES of the bill appropriately:

ARTICLE _____. RENTAL-PURCHASE AGREEMENTS

SECTION _____. Section 35.71, Business & Commerce Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Loss damage waiver" means a merchant's agreement not to hold a consumer liable for loss from all or part of any damage to merchandise.

SECTION _____. Section 35.72(c), Business & Commerce Code, is amended to read as follows:

(c) A rental-purchase agreement may not contain a provision:

- (1) requiring a confession of judgement;
- (2) authorizing a merchant or an agent of the merchant to commit a breach of the peace in the repossession of merchandise;
- (3) waiving a defense, counterclaim, or right the consumer may have against the merchant or an agent of the merchant;
- (4) requiring the purchase of insurance or a loss damage waiver from the merchant to cover the merchandise;
- (5) requiring the payment of a late charge or reinstatement fee unless a periodic payment is delinquent for more than seven days if the payment is due monthly, or is delinquent for more than three days if the payment is due more frequently than month, and the charge or fee is in an amount equal to not more than the lesser of five percent of the delinquent payment or \$5, and not less than \$2; or
- (6) requiring a payment at the end of the scheduled rental-purchase term in excess of or in addition to a regular periodic payment in order to acquire ownership of the merchandise. In no event shall the consumer be required to pay a sum greater than the total amount to be paid to acquire ownership, as disclosed in Subsection (g) (3) of this section.

SECTION _____. Subchapter F, chapter 35, Business & Commerce Code, is amended by adding Section 35.721 to read as follows:

Sec. 35.721. LOSS DAMAGE WAIVER. (a) In addition to other charges permitted by this subchapter, a consumer may contract for a loss damage waiver. A loss damage waiver is not insurance.

(b) A merchant may not sell a loss damage waiver unless the

consumer agrees to the waiver in writing. A merchant may not impose or require the purchase of a loss damage waiver as a mandatory charge.

(c) A loss damage waiver may exclude loss or damage to the merchandise that is caused by an unexplained disappearance or abandonment of the merchandise, or any other damage that is intentionally caused by the consumer or that results from the consumer's wilful or wanton misconduct.

(d) A loss damage waiver agreement must include a statement of the total charge for the loss damage waiver.

(e) A merchant may charge a periodic fee for a loss damage waiver that may not exceed 10 percent of the periodic rental payment.

(f) A contract that offers a loss damage waiver must include the following notice:

"This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the merchandise. You do not have to purchase this coverage. Before deciding whether or not to purchase this loss damage waiver, you may consider whether your own homeowners' or casualty insurance policy affords you coverage for loss of or damage to rental merchandise and the amount of the deductible you would pay under your policy."

(g) A merchant may not sell a loss damage waiver unless the form of the contract containing the waiver has been approved by the Texas Department of Licensing and Regulation.

(h) The Texas Commission of Licensing and Regulation shall by rule:

(1) provide for annual submission of ~~a~~ all contract forms, and all amendments to contract forms, containing a loss damage waiver for review; and

(2) establish a reasonable fee to be paid by the merchant for the review of contract forms and for Texas Department of Licensing and Regulation administration of this subchapter.

SECTION _____. Subchapter F, Chapter 35, Business and Commerce Code, is amended by adding Section 35.722 to read as follows:

Section 35.722 ENFORCEMENT; INVESTIGATION; HEARING.

(a) The Executive Director of the Texas Department of Licensing and Regulation shall enforce Section 35.721 and may investigate any merchant who has one or more contracts that include loss damage waivers as necessary.

(b) A person may file a complaint alleging a violation of Section 35.721 with the Executive Director of the Texas Department of Licensing and Regulation, who shall investigate the alleged violation on receipt of the complaint, and may inspect any records relevant to the complaint.

(c) If, as a result of an investigation, the Executive Director of the Texas Department of Licensing and Regulation determines that a violation may have occurred, an opportunity for a hearing shall be provided pursuant to the provisions of the Administrative Procedure Act, Gov't Code, Chapter 2001.

(d) If, after opportunity for hearing, the Texas Commission of Licensing and Regulation determines that the merchant has violated Section 35.721, the Commission may, as appropriate:

(1) impose an administrative penalty pursuant to Occupations Code, Chapter 51, Subchapter F, and

(2) award the complainant damages in an amount up to the amount of the contract price for the merchandise.

SECTION _____. The change in law made by this article applies only to a rental-purchase agreement entered into on or after the effective date of this Act. A rental-purchase agreement entered into before the effective date of this Act is governed by the law in effect on the date on which the rental-purchase agreement was entered into, and the former law is continued in effect for that purpose.