By: Solomons                                          H.B. No. 1494

Substitute the following for H.B. No. 1494:

By: Eiland                                       C.S.H.B. No. 1494

A BILL TO BE ENTITLED

1                              AN ACT

2  relating to loss damage waivers and payment of certain charges and

3  fees in certain rental-purchase agreements.

4        BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5        SECTION 1.  Section 35.71, Business & Commerce Code, is

6  amended by adding Subdivision (3-a) to read as follows:

7             (3-a) "Loss    damage    waiver"    means    a    merchant's

8  agreement not to hold a consumer liable for loss from all or a part

9  of any damage to merchandise.

10        SECTION 2.  Section 35.72(c), Business & Commerce Code, is

11  amended to read as follows:

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

13  provision:

14             (1)  requiring a confession of judgment;

15             (2)  authorizing a merchant or an agent of the merchant

16  to commit a breach of the peace in the repossession of merchandise;

17             (3)  waiving  a  defense,  counterclaim,  or  right  the

18  consumer may have against the merchant or an agent of the merchant;

19             (4)  requiring  the  purchase  of  insurance  or  a  loss

20  damage waiver from the merchant to cover the merchandise;

21             (5)  requiring   the   payment   of   a   late   charge   or

22  reinstatement fee unless a periodic payment is delinquent for more

23  than seven days if the payment is due monthly, or is delinquent for

24  more  than  three  days  if  the  payment  is  due  more  frequently  than

1 monthly, and the charge or fee is in an amount equal to not more than

2 the lesser of five percent of the delinquent payment or $5, and not

3 less than $2; or

4 　　　　　(6)　requiring a payment at the end of the scheduled

5 rental-purchase term in excess of or in addition to a regular

6 periodic payment in order to acquire ownership of the merchandise.

7 In no event shall the consumer be required to pay a sum greater than

8 the total amount to be paid to acquire ownership, as disclosed in

9 Subsection (g)(3) of this section.

10 　　　　SECTION 3.　Subchapter F, Chapter 35, Business & Commerce

11 Code, is amended by adding Section 35.721 to read as follows:

12 　　　　Sec. 35.721.　LOSS DAMAGE WAIVER.　(a)　In addition to other

13 charges permitted by this subchapter, a consumer may contract for a

14 loss damage waiver.　A loss damage waiver is not insurance.

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

16 consumer agrees to the waiver in writing.　A merchant may not impose

17 or require the purchase of a loss damage waiver as a mandatory

18 charge.

19 　　　　(c)　A loss damage waiver may exclude loss or damage to the

20 merchandise that is caused by an unexplained disappearance or

21 abandonment of the merchandise, or any other damage that is

22 intentionally caused by the consumer or that results from the

23 consumer's wilful or wanton misconduct.

24 　　　　(d)　A loss damage waiver agreement must include a statement

25 of the total charge for the loss damage waiver.

26 　　　　(e)　A merchant may charge a fee for a loss damage waiver that

27 may not exceed 10 percent of the periodic rental payment.

1       (f)  A contract that offers a loss damage waiver must include

2   the following notice:

3       "This contract offers an optional loss damage waiver for an

4   additional charge to cover your responsibility for loss of or

5   damage to the merchandise.  You do not have to purchase this

6   coverage.  Before deciding whether or not to purchase this loss

7   damage waiver, you may consider whether your own homeowners' or

8   casualty insurance policy affords you coverage for loss of or

9   damage to rental merchandise and the amount of the deductible you

10  would pay under your policy."

11      SECTION 4.  The change in law made by this Act applies only

12  to a rental-purchase agreement entered into on or after the

13  effective date of this Act.  A rental-purchase agreement entered

14  into before the effective date of this Act is governed by the law in

15  effect on the date on which the rental-purchase agreement was

16  entered into, and the former law is continued in effect for that

17  purpose.

18      SECTION 5.  This Act takes effect September 1, 2003.