

By: Solomons

H.B. No. 1494

A BILL TO BE ENTITLED

AN ACT

relating to loss damage waivers and payment of certain charges and fees in certain rental-purchase agreements.

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

SECTION 1. 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 a part of any damage to merchandise.

SECTION 2. 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 judgment;

(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

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 caused by moisture, scratches, or vandalism,
21 mysterious disappearance of the merchandise, abandonment of the
22 merchandise, or any other damage that is intentionally caused by
23 the consumer or that results from the consumer's wilful or wanton
24 misconduct or negligence.

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

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

1 to a rental-purchase agreement entered into on or after the
2 effective date of this Act. A rental-purchase agreement entered
3 into before the effective date of this Act is governed by the law in
4 effect on the date on which the rental-purchase agreement was
5 entered into, and the former law is continued in effect for that
6 purpose.

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