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H.B. No. 1851

A BILL TO BE ENTITLED

AN ACT

relating to rental agreements.

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

SECTION 1. Business and Commerce Code Title 5, Regulation of Businesses and Services, Subtitle B, Rental Practices, is amended by adding Chapter 93 to read as follows:

CHAPTER 93. RENTAL AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Consumer" means an individual who rents personal property under a rental agreement.

(3) "Department" means the Texas Department of Licensing and Regulation.

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

(5) "Merchandise" means the personal property that is the subject of a rental agreement.

(6) "Rental agreement" means an agreement for 30 days or less that states the terms governing the consumers use of merchandise rented by a rental company and that does not permit the consumer to become the owner of the merchandise.

1           (7) "Rental Company" means a person who, in the  
2 ordinary course of business, regularly rents, offers to rent, or  
3 arranges for the renting of merchandise under a rental agreement.

4           SUBCHAPTER B. FORM AND CONTENT OF AGREEMENTS

5           Sec. 93.051. FORM OF AGREEMENT. (a) A rental agreement  
6 must be written in plain English.

7           (b) A numerical amount included in a rental agreement must  
8 be stated in figures.

9           (c) A disclosure required by this chapter must be printed or  
10 typed in each rental agreement in a size equal to at least 10-point  
11 boldfaced type.

12           Sec. 93.052. REQUIRED DISCLOSURES. (a) A rental agreement  
13 must disclose:

14                   (1) the rental time period;

15                   (2) the base charge for the rental time period;

16                   (3) the amount and purpose of any payment, charge, or  
17 fee in addition to the base charge for the rental time period; and

18                   (4) whether the consumer is liable for loss or damage  
19 to the merchandise and, if so, the maximum amount for which the  
20 consumer may be liable.

21           Sec. 93.053. OTHER REQUIRED PROVISIONS. A rental agreement  
22 must provide that any payment, charge, or fee in addition to the  
23 base charge for the rental time period must be reasonably related to  
24 the service performed.

25           Sec. 93.054. PROHIBITED PROVISIONS. (a) A rental  
26 agreement may not:

27                   (1) require a consumer to purchase insurance or a loss

1 damage waiver from the rental company to cover the merchandise;  
2 (2) require a confession of judgment; or  
3 (3) waive a defense, counterclaim, or right the  
4 consumer may have against the rental company or an agent of the  
5 rental company.

6 SUBCHAPTER C. LOSS DAMAGE WAIVERS AND MANDATORY CHARGES

7 Sec. 93.101. LOSS DAMAGE WAIVER MUST BE AGREED TO IN  
8 WRITING. The purchase of a loss damage waiver must be agreed to in  
9 writing by the consumer at or before the time the rental agreement  
10 is executed.

11 Sec. 93.102. NOTICE TO CONSUMER. A rental agreement that  
12 offers a loss damage waiver must include the following notice:

13 NOTICE: Your rental agreement offers, for an additional  
14 charge, an optional waiver to cover all or a part of your  
15 responsibility for damage to or loss to the merchandise rented.  
16 Before deciding whether to purchase the waiver, you may wish to  
17 determine whether your own homeowners or renters insurance or  
18 credit card agreement provides you coverage for loss or damage to  
19 rental merchandise and the amount of the deductible you would pay  
20 under your own insurance coverage. The purchase of the waiver is  
21 not mandatory. The waiver is not insurance.

22 Sec. 93.103. POSTED NOTICE. In addition to providing the  
23 notice required by Section 91.052, a rental company shall post in a  
24 conspicuous location where the damage waiver is offered the  
25 following notice:

26 Notice to Texas Residents Regarding Loss Damage Waivers  
27 Your homeowners or renters insurance policy may or may

1 not provide coverage for your responsibility for the loss of or  
2 damage to rented merchandise during the rental term. Before  
3 deciding whether to purchase a loss damage waiver, you may wish to  
4 determine whether your homeowners or renters insurance policy  
5 provides you coverage for damage or loss to the rented merchandise.

6 Sec. 93.104. PROHIBITED REPRESENTATIONS AND COERCION. (a)

7 An employee or agent of a rental company may not:

8 (1) make an oral or written representation that  
9 contradicts this chapter; or

10 (2) use coercive language or a coercive act in an  
11 attempt to persuade a consumer to purchase a damage waiver.

12 (b) For purposes of this section, if the consumer has  
13 declined the damage waiver, a further statement or question by the  
14 employee or agent that refers to the damage waiver, other than a  
15 statement made in conjunction with review of the rental agreement  
16 that the waiver has been declined, is considered coercive.

17 Sec. 93.105. MANDATORY CHARGE. (a) A rental company that  
18 includes a mandatory charge in a rental agreement shall prominently  
19 display and fully disclose the charge:

20 (1) separately on the face of the agreement; and

21 (2) in all of the rental company's price advertising,  
22 price quotes, price offers, and price displays, including displays  
23 in computerized reservation systems.

24 (b) A rental company may not impose or require the purchase  
25 of a loss damage waiver as a mandatory charge.

26 Sec. 93.106. AUTHORIZED EXCLUSIONS. A loss damage waiver  
27 may exclude:

1           (1) damage that is intentionally caused by the  
2 consumer or;

3           (2) damage that results from the consumer's wilful or  
4 wanton misconduct.

5           Sec. 93.107. RELATIONSHIP TO INSURANCE. A loss damage  
6 waiver is not insurance.

7           Sec. 93.108. RULES. The commission may adopt rules  
8 consistent with this chapter relating to loss damage waivers in  
9 rental agreements.

10          Sec. 93.109. FEES. The commission may by rule establish a  
11 fee for the administration of this chapter by the department.

12                   SUBCHAPTER D. ENFORCEMENT PROVISIONS

13          Sec. 93.151. ADMINISTRATIVE ENFORCEMENT OF CHAPTER. (a) The  
14 department shall enforce this chapter and, as necessary may  
15 investigate a rental company who has one of more rental agreements  
16 that include a loss damage waiver.

17           (b) A person may file a complaint with the department  
18 alleging a violation of this chapter. The department shall  
19 investigate the alleged violation on receipt of the complaint and  
20 may inspect any record relevant to the complaint.

21           (c) If, as a result of an investigation the department  
22 determines that a violation may have occurred, the commission shall  
23 provide an opportunity for a hearing in the manner provided for a  
24 contested case under Chapter 2001, Government Code.

25           (d) If, after opportunity for hearing, the commission  
26 determines that the rental company has violated this chapter, the  
27 commission may:

1           (1) impose an administrative penalty under Chapter 51,  
2 Occupations Code; and

3           (2) award the complainant damages in an amount not to  
4 exceed the amount of the price in the rental agreement.

5           Sec. 93.152. CIVIL ACTION FOR VIOLATION OF CHAPTER. (a) A  
6 consumer damaged by a rental company's violation of this chapter is  
7 entitled to recover from the rental company:

8           (1) actual damages; and

9           (2) reasonable attorney's fees and court costs.

10          (b) A rental company is not liable under this section for a  
11 violation of this chapter caused by the rental company's error if,  
12 subject to Subsection (c), the rental company:

13          (1) provides the consumer written notice of the error;

14 and

15          (2) makes adjustments in the consumer's account as  
16 necessary to ensure:

17                  (A) the consumer will not be required to pay an  
18 amount in excess of the amount disclosed; and

19                  (B) the agreement otherwise complies with this  
20 chapter.

21          (c) A rental company must take action under Subsection (b)  
22 before:

23                  (1) the 31st day after the date the rental company  
24 discovers the error; and

25                  (2) the rental company receives written notice of the  
26 error from the consumer or an action under this section is filed.

27          Sec. 93.153. DECEPTIVE TRADE PRACTICE. A violation of this

1 chapter is a deceptive trade practice under Subchapter E, Chapter  
2 17.

3 SECTION 2. Business and Commerce Code Title 5, Regulation  
4 of Businesses and Services, Subtitle B, Rental Practices, is  
5 amended by adding Chapter 94 to read as follows:

6 CHAPTER 94. COMMERCIAL RENTAL AGREEMENTS

7 Sec. 94.001. DEFINITIONS. In this chapter:

8 (1) "Business" means a trade, occupation, profession,  
9 or other commercial activity.

10 (2) "Department" means the Texas Department of  
11 Licensing and Regulation.

12 (3) "Loss damage waiver" means a rental company's  
13 agreement to not hold a business liable for loss from all or part of  
14 any damage to merchandise.

15 (4) "Rental agreement" means an agreement that states  
16 the terms governing the use of merchandise rented by a rental  
17 company and that does not permit the consumer to become the owner of  
18 the merchandise.

19 (5) "Rental Company" means a person who, in the  
20 ordinary course of business, regularly rents, offers to rent, or  
21 arranges for the renting of merchandise under a rental agreement.

22 Sec. 94.002. RENTAL AGREEMENTS WITH BUSINESSES EXEMPTED  
23 FROM DEPARTMENT REGULATION. The Department shall not regulate  
24 rental agreements with businesses.

25 Sec. 94.003. RELATIONSHIP OF LOSS DAMAGE WAIVERS TO  
26 INSURANCE. A loss damage waiver in a rental agreement with a  
27 business is not insurance.

1           SECTION 3. This Act applies to rental agreements entered  
2 into on or after January 1, 2010. A rental agreement entered into  
3 before January 1, 2010, is governed by the law in effect immediately  
4 before the effective date, and the former law is continued in effect  
5 for that purpose.

6           SECTION 4. This Act takes effect September 1, 2009.