

BILL ANALYSIS

S.B. 289
By: Carona
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A loss damage waiver is a clause contained in some rental-purchase agreements, that provides that a merchant will not hold the purchasing consumer liable for the loss of all or part of the merchandise purchased. Although rental-purchase companies are not required to be licensed with the Texas Department of Licensing and Regulation (TDLR), under current law merchants who offer rental-purchase agreements that include a loss damage waiver clause must have such agreements reviewed and approved by TDLR. TDLR reviews the waivers to ensure that they contain a statutorily required disclosure notifying a consumer that the loss damage waiver is optional and may be redundant with other insurance policies.

Currently, there are approximately only 50 approved contracts on file with TDLR. Because of the small number, and the fact that there are no pending enforcement cases and no penalties have ever been assessed, TDLR believes the program is unnecessary. Additionally, because removing the review requirement would not affect consumer remedies under Chapter 92 (Rental-Purchase Agreements), Business & Commerce Code, or the Deceptive Trade Practices Act, the elimination of TDLR's program leaves recourses intact for consumers who encounter a problem with a rental-purchase agreement.

S.B. 289 repeals the requirement that rental-purchase companies receive TDLR approval of agreements that include a loss damage waiver clause before such companies offer the agreements to consumers. S.B. 289 does not make any changes to the statutorily required disclosure that must be included when a loss damage waiver clause is included in an agreement, nor does it affect the consumer remedies under Chapter 92, Business & Commerce Code, or the Deceptive Trade Practices Act.

S.B. 289 amends current law relating to the approval requirement for a rental-purchase agreement that includes a loss damage waiver provision.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission of Licensing and Regulation is rescinded in SECTION 2 (Sections 92.158 and 92.159, Business & Commerce Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 92.153, Business & Commerce Code, to prohibit a merchant from taking certain actions, including selling a loss damage waiver unless the contract containing the waiver complies with this chapter (Rental-Purchase Agreements), rather than to prohibit a merchant from selling a loss damage waiver unless the Texas Department of Licensing and Regulation (TDLR) has approved the form of the contract containing the waiver.

SECTION 2. Repealers: Sections 92.001(2) (defining "commission") and (4) (defining "department"), 92.158 (Rules for Review of Certain Contracts), 92.159 (Fees), and 92.160 (Administrative Enforcement of Subchapter), Business & Commerce Code.

SECTION 3. (a) Provides that an administrative proceeding pending on the effective date of this Act that is related to a complaint filed under Section 92.160, Business & Commerce Code, as that section existed immediately before the effective date of this Act, is dismissed.

(b) Authorizes an administrative penalty assessed under Chapter 92, Business & Commerce Code, as that chapter existed immediately before the effective date of this

Act, and Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code, to be collected as provided by Chapter 51, Occupations Code.

(c) Requires TDLR to return a prorated portion of the fee paid by a merchant to TDLR under Section 92.159, Business & Commerce Code, as that section existed immediately before the effective date of this Act.

SECTION 4. Effective date: September 1, 2013.

EFFECTIVE DATE

September 1, 2013.