

BILL ANALYSIS

Senate Research Center
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H.B. 2052
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A loss damage waiver is a clause contained in some consumer contracts that provides that a business will not hold a consumer liable for the damage of all or part of the item rented. Consumers pay additional consideration for these waivers, and are not required to purchase them.

While the Business and Commerce Code contains provisions for loss damage waivers for rental cars and other goods that are available for rent, such as electronics or furniture, it does not have a provision for heavy equipment.

H.B. 2052 amends the Business and Commerce Code to allow for the sale of loss damage waivers for heavy equipment in the same way.

H.B. 2052 amends current law relating to loss damage waivers in connection with the rental of certain heavy equipment and provides penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 5, Business & Commerce Code, to create Chapter 93, as follows:

Chapter 93. LOSS DAMAGE WAIVERS FOR RENTAL OF CERTAIN HEAVY EQUIPMENT

Sec. 93.001. DEFINITIONS. Defines “customer,” “heavy equipment,” “heavy equipment loss damage waiver,” “merchant,” and “rental agreement.”

Sec. 93.002. CONTRACT FOR LOSS DAMAGE WAIVER. Provides that a customer may contract with a merchant for a heavy equipment loss damage waiver in connection with a rental agreement.

Sec. 93.003. RESTRICTIONS ON MERCHANT CONCERNING WAIVER. Prohibits a merchant from:

- (1) selling a heavy equipment loss damage waiver unless:
 - (A) the contract containing the waiver complies with this chapter; and
 - (B) the customer agrees to the waiver in writing; or
- (2) imposing or requiring the purchase of a heavy equipment loss damage waiver as a condition of entering into a rental agreement.

Sec. 93.004. REQUIRED NOTICE. Requires that a contract that offers a heavy equipment loss damage waiver include a certain notice and sets forth the required language of the notice.

Sec. 93.005. STATEMENT OF TOTAL CHARGE. Requires that a heavy equipment loss damage waiver agreement include a statement of the total charge for the waiver.

Sec. 93.006. AUTHORIZED EXCLUSIONS. Provides that a heavy equipment loss damage waiver may exclude:

- (1) loss of or damage to the heavy equipment that is caused by an unexplained disappearance or abandonment of the heavy equipment;
- (2) damage that is intentionally caused by the customer; or
- (3) damage that results from the customer's wilful or wanton misconduct.

Sec. 93.007. RELATIONSHIP TO INSURANCE. Provides that a heavy equipment loss damage waiver is not insurance.

Sec. 93.008. CIVIL PENALTY. Provides that a merchant that violates this chapter is liable for a civil penalty in an amount of not less than \$500 or more than \$1,000 for each act of violation.

Sec. 93.009. INJUNCTIVE RELIEF. Provides that a person injured or threatened with injury by a violation of this chapter may seek injunctive relief against the person committing or threatening to commit the violation.

Sec. 91.010. SUIT FOR CIVIL PENALTY OR INJUNCTIVE RELIEF. Provides that the attorney general or a county or district attorney may bring an action in the name of the state for a civil penalty under Section 93.008, injunctive relief under Section 93.009, or both.

SECTION 5. Provides that the change in law made by this Act applies only to a rental agreement entered into on or after the effective date of this Act. Provides that a rental agreement entered into before the effective date of this Act is governed by the law in effect when the rental agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2015.