

AN ACT

relating to loss damage waivers in connection with the rental of certain heavy equipment; providing penalties.

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

SECTION 1. Subtitle B, Title 5, Business & Commerce Code, is amended by adding Chapter 93 to read as follows:

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

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Customer" means a person who rents heavy equipment under a rental agreement.

(2) "Heavy equipment" has the meaning assigned by Section 23.1241, Tax Code.

(3) "Heavy equipment loss damage waiver" means a merchant's agreement to not hold a customer liable for loss from all or part of any damage to heavy equipment.

(4) "Merchant" means a person who, in the ordinary course of business, regularly rents, offers to rent, or arranges for the rental of heavy equipment under a rental agreement.

(5) "Rental agreement" means an agreement under which a customer pays a fee or other consideration to rent heavy equipment.

Sec. 93.002. CONTRACT FOR LOSS DAMAGE WAIVER. 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. A merchant may not:

(1) sell 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) impose or require the purchase of a heavy equipment loss damage waiver as a condition of entering into a rental agreement.

Sec. 93.004. REQUIRED NOTICE. A contract that offers a heavy equipment loss damage waiver must include the following notice:

"This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the heavy equipment. You do not have to purchase this coverage. Before deciding whether to purchase this loss damage waiver, you may consider whether your insurance policies afford you coverage for loss of or damage to the heavy equipment rented and the amount of the deductible you would pay under your policies."

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

Sec. 93.006. AUTHORIZED EXCLUSIONS. A heavy equipment loss damage waiver may exclude:

(1) loss of or damage to the heavy equipment that is

1 caused by an unexplained disappearance or abandonment of the heavy
2 equipment;

3 (2) damage that is intentionally caused by the
4 customer; or

5 (3) damage that results from the customer's wilful or
6 wanton misconduct.

7 Sec. 93.007. RELATIONSHIP TO INSURANCE. A heavy equipment
8 loss damage waiver is not insurance.

9 Sec. 93.008. CIVIL PENALTY. A merchant that violates this
10 chapter is liable for a civil penalty in an amount of not less than
11 \$500 or more than \$1,000 for each act of violation.

12 Sec. 93.009. INJUNCTIVE RELIEF. A person injured or
13 threatened with injury by a violation of this chapter may seek
14 injunctive relief against the person committing or threatening to
15 commit the violation.

16 Sec. 93.010. SUIT FOR CIVIL PENALTY OR INJUNCTIVE RELIEF.
17 The attorney general or a county or district attorney may bring an
18 action in the name of the state for a civil penalty under Section
19 93.008, injunctive relief under Section 93.009, or both.

20 SECTION 2. The change in law made by this Act applies only
21 to a rental agreement entered into on or after the effective date of
22 this Act. A rental agreement entered into before the effective date
23 of this Act is governed by the law in effect when the rental
24 agreement was entered into, and the former law is continued in
25 effect for that purpose.

26 SECTION 3. This Act takes effect September 1, 2015.

H.B. No. 2052

President of the Senate

Speaker of the House

I certify that H.B. No. 2052 was passed by the House on April 16, 2015, by the following vote: Yeas 145, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2052 was passed by the Senate on May 20, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor