

By: Seliger

S.B. No. 1392

A BILL TO BE ENTITLED

AN ACT

relating to service contracts, vehicle protection products and loss damage waivers for heavy equipment; requiring an occupational license; expanding the applicability of an occupational license.

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

SECTION 1. Section 1304.002, Occupations Code, is amended by amending Subdivision (4) and adding Subdivision (5-b) to read as follows:

Sec. 1304.002. DEFINITIONS. In this chapter:

(4) "Consumer" means a person ~~[an individual]~~ who, for a purpose other than resale, buys tangible personal property that is:

(A) distributed in commerce; and

(B) normally used for personal, family, ~~[or]~~ household, ~~[purposes and not for]~~ business or research purposes.

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

SECTION 2. Section 1304.003(c), Occupations Code, is amended to read as follows:

Sec. 1304.003. SERVICE CONTRACT.

(c) For purposes of Subsection (a), normal wear for a motor vehicle or heavy equipment may include minor and reasonable wear and tear sustained ~~[that a vehicle sustains]~~ in everyday ordinary operation including:

1 (1) small dents, dings, and creases repairable by the
2 process of paintless dent removal without affecting the existing
3 paint finish and without replacing [~~vehicle~~] body panels or
4 sanding, bonding, or painting;

5 (2) small windshield chips and cracks repairable
6 without replacement of the entire windshield;

7 (3) worn tire tread;

8 (4) worn interior fabric or carpet items; and

9 (5) tire and wheel damage resulting from ordinary road
10 hazards such as potholes, rocks, wood debris, metal parts, glass,
11 plastic, or composite scraps.

12 SECTION 3. Section [2306.002](#), Occupations Code, is amended
13 as follows:

14 (8) "Vehicle" includes a "motor vehicle" as defined by
15 Section [2301.002](#)(23), Occupations Code, or "heavy equipment" as
16 defined by Section [23.1241](#), Tax Code.

17 (9) "Vehicle protection product" means a product or
18 system, which includes a written warranty, that is:

19 (A) installed on or applied to a vehicle;

20 (B) designed to prevent loss or damage to a
21 vehicle from a specific cause; and

22 (C) subject to the limitation of Section
23 [2306.003](#).

24 SECTION 4. Business and Commerce Code, Title 5, Subtitle B,
25 is amended to create Chapter 93 to read as follows:

26 Chapter 93. HEAVY EQUIPMENT LOSS DAMAGE WAIVER

27 Sec. 93.001. DEFINITIONS. In this chapter:

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

3 (2) "Heavy equipment" has the meaning found under
4 Section 23.1241, Tax Code.

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

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

11 (5) "Rental agreement" means an agreement under which
12 a customer may pay a fee and uses heavy equipment.

13 Sec. 93.002. CONTRACT FOR WAIVER. A customer may contract
14 with a merchant for a heavy equipment loss damage waiver.

15 Sec. 92.003. RESTRICTIONS ON MERCHANT CONCERNING WAIVER. A
16 merchant may not:

- 17 (1) sell a heavy equipment loss damage waiver unless:
18 (A) the contract containing the waiver complies
19 with this chapter; and
20 (B) the customer agrees to the waiver in writing.

21 (2) impose or require the purchase of a heavy
22 equipment loss damage waiver when entering into a rental agreement.

23 Sec. 92.004. REQUIRED NOTICE IN WAIVER. A contract that
24 offers a loss damage waiver must include the following notice:

25 "This contract offers an optional loss damage waiver for an
26 additional charge to cover your responsibility for loss of or
27 damage to the heavy equipment. You do not have to purchase this

1 coverage. Before deciding whether or not to purchase this loss
2 damage waiver, you may consider whether your insurance policies
3 afford you coverage for loss of or damage to items rented and the
4 amount of the deductible you would pay under your policy."

5 Sec. 92.005. STATEMENT OF TOTAL CHARGE. A heavy equipment
6 loss damage waiver must include a statement of the total charge for
7 the waiver.

8 Sec. 92.006. AUTHORIZED EXCLUSIONS. A heavy equipment loss
9 damage waiver may exclude:

10 (1) loss or damage to the heavy equipment that is
11 caused by an unexplained disappearance or abandonment of the
12 commercial equipment;

13 (2) damage that is intentionally caused by the
14 customer; or

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

17 Sec. 92.007. RELATIONSHIP TO INSURANCE. A heavy equipment
18 loss damage waiver is not insurance.

19 Sec. 91.008. CIVIL PENALTY. A merchant that violates this
20 chapter is liable for a civil penalty in an amount of not less than
21 \$500 or more than \$1,000 for each act of violation.

22 Sec. 91.009. INJUNCTION. A person injured or threatened
23 with injury by a violation of this chapter may seek injunctive
24 relief against the person committing or threatening to commit the
25 violation.

26 Sec. 91.010. SUIT FOR CIVIL PENALTY OR INJUNCTIVE RELIEF.
27 The attorney general or a county or district attorney may bring an

1 action in the name of the state for a civil penalty under Section
2 91.008, injunctive relief under Section 91.009, or both.

3 SECTION 5. The changes in law made by this Act apply to a
4 service contract or vehicle protection product contract entered
5 into on or after the effective date of this Act. A service contract
6 or vehicle protection product contract entered into before the
7 effective date of this Act is governed by the law in effect when the
8 contract was entered into, and the former law is continued in effect
9 for that purpose.

10 SECTION 6. This Act takes effect September 1, 2015.