

- SUBJECT:** Purchase of damage waivers in rental car agreements
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Solomons, Woolley
0 nays
- WITNESSES:** For — Nub Donaldson, Car and Truck Rental and Leasing Association
Against — None
- DIGEST:** CSHB 3091 would prohibit a rental car company, as defined in the bill, from selling a damage waiver unless the renter agreed to the waiver in writing at or before the time the rental agreement was executed. The bill would define a damage waiver as a rental company's agreement not to hold an authorized driver liable for all or part of any damage to a rented vehicle. A rental company could not require purchase of a damage waiver as a mandatory charge.
- A rental company could not void a damage waiver unless:
- ! damage was caused intentionally or as a result of wilful, wanton, or reckless conduct;
 - ! the damage resulted from use of the vehicle while under the influence of intoxicants or controlled substances;
 - ! the renter supplied false or fraudulent information to the rental company;
 - ! damage occurred during the commission of a crime other than a traffic violation;
 - ! damage arose out of the use of the vehicle to carry persons or property for hire, to push or tow anything, to engage in a speed contest, or for driver's training;
 - ! damage arose out of the use of the vehicle by a person other than the authorized driver; or
 - ! damage occurred during unauthorized use outside the continental United States.

In cases where a waiver was not included in the base rental rate, the rental company would have to provide each renter a disclosure notice in at least 10-point type, in language specified by the bill, stating that an optional damage waiver was available, that the waiver was not mandatory and would not constitute insurance, and that before buying a waiver, renters might wish to determine whether their own insurance might include coverage for rental vehicle damage or loss.

A rental company would have to display prominently and disclose fully any mandatory charge both in the rental agreement and in all price advertising, price displays, price quotes, and price offers, including displays in computerized reservation systems. The bill would define a mandatory charge as any charge, surcharge, or fee in addition to the base rental rate that the renter does not have the option of avoiding or declining and that is not required by law.

A rental company that violated these regulations would be subject to a civil penalty of at least \$500 but not more than \$1,000 for each violation. A county or district attorney or the attorney general could bring suit in the name of the state to recover the civil penalty, injunctive relief, or both. Any person or entity injured or threatened with injury by a violation could seek injunctive relief against the violator.

The bill would repeal art. 9026, VTCS, which previously regulated these matters.

The bill would take effect September 1, 1999, and would apply only to rental agreements entered into on or after that date.

**SUPPORTERS
SAY:**

CSHB 3091 would adopt a model consumer-protection law regulating sale of damage waivers by rental car companies now in effect in many other states. The bill would protect consumers from abuses stemming from nondisclosure of mandatory charges and would put Texas law in the national mainstream.

The bill also would eliminate ambiguous and complicated provisions in the current law relating to the calculation of charges for damage waivers, allowing market-based rates that are competitive with those in other states.

Many rental car companies do business in multiple states. Standardizing contract language would guarantee a broader understanding of rental contracts by the rental company and the consumer.

OPPONENTS
SAY:

CSHB 3091, while strengthening some consumer protections, would weaken others. The bill would allow a rental company to void a damage waiver if the renter supplied fraudulent or materially false information. Current law allows a company to void the waiver only if the renter had intent to defraud.

Current law requires a disclosure to be printed in 12-point type. CSHB 3091 would require only 10-point type, making the disclosure harder to read and more like “fine print.” If the intent of the bill is to make the disclosure easier for consumers to understand, the print should not be smaller.

Current law requires that the cost of a damage waiver be related reasonably to a rental company’s expenses. Because this bill would not address cost issues, it might allow a rental company to inflate the cost of damage waivers to discourage consumers from buying them.

NOTES:

The committee substitute changed the definition of “rental car company” to exclude licensed automobile dealers whose primary business is not the renting of private passenger automobiles.

The companion bill, SB 1246 by Brown, was reported favorably by the Senate Economic Development Committee on April 22 and was recommended for the Local and Uncontested Calendar.