

SUBJECT: Authorizing loss-damage waivers as part of rental agreements

COMMITTEE: Insurance — favorable, without amendment

VOTE: 5 ayes — Eiland, Averitt, G. Lewis, J. Moreno, Seaman
1 nay — Burnam
1 present, not voting — Olivo
2 absent — Smithee, Thompson

SENATE VOTE: On final passage, April 27 — voice vote

WITNESSES: No public hearing

BACKGROUND: Business and Commerce Code, chapter 35, subchapter F governs rental-purchase agreements. Sec. 35.72 prohibits a rental-purchase agreement from containing certain provisions.

DIGEST: SB 957 would authorize a merchant registered with the Texas Department of Licensing and Regulation (TDLR) to sell consumers a loss-damage waiver as part of a rental-purchase agreement. The bill would define a loss-damage waiver as an agreement by the merchant not to hold the consumer liable for loss from all or part of any damage to merchandise and would state explicitly that a loss-damage waiver is not insurance. The merchant could not require purchase of such a waiver in a rental-purchase agreement.

A merchant could not sell a loss-damage waiver unless the consumer agreed to the waiver in writing at or before the time the rental-purchase agreement was executed. A merchant could not impose or require the purchase of a loss-damage waiver as a mandatory charge.

A waiver agreement would have to include a statement of the total periodic charge for the waiver and a written notice informing the consumer that the waiver was offered under the contract but was optional and was not insurance. This disclosure would have to advise consumers to check their

homeowners coverage to see whether the rented items would be covered and to check the amount of the deductible for that policy before purchasing the waiver. The merchant's agent could not contradict this notice, nor could the agent use coercive language or actions to persuade consumers to purchase the waiver. If the consumer had declined the waiver, any further statement or question by the merchant's agent about the waiver, other than noting that the waiver had been declined, would be considered coercive.

The bill would set maximum charges for loss-damage waivers at the greater of 10 percent or \$2 on a weekly or biweekly contract and 10 percent or \$5 on a monthly contract.

The loss-damage waiver agreement could exclude loss or damage caused by moisture, scratches, vandalism, mysterious disappearance, abandonment, damage intentionally caused by the consumer, or damage resulting from the consumer's wilful or wanton misconduct or negligence.

Merchants could register with TDLR to sell loss-damage waivers by paying an annual fee. TDLR could set the registration fee by rule at an amount necessary to recoup its costs and could make other rules necessary to govern registration applications.

The commissioner of licensing and regulation would have the right to enforce the section and to investigate consumer complaints about merchants charging excessive fees.

The bill would take effect September 1, 2001, and would apply only to a rental-purchase agreement entered into on or after that date. The registration and filing requirements would apply on and after January 1, 2002.

**SUPPORTERS
SAY:**

SB 957 would allow consumers to contract with the renter of goods that they acquire through rental-purchase agreements to limit the renter's liability for potential damage. Since the existing law regarding rental-purchase agreements is silent on the subject, it is unclear whether such agreements are permitted. This bill would clarify that point. It also would provide needed regulation for merchants who sell these waivers and would protect unsophisticated consumers who enter into rental-purchase agreements.

By capping prices, requiring notice of the optional nature of the waivers, and reining in abusive high-pressure sales tactics, SB 957 would help ensure that consumers make fully informed, voluntary decisions whether to purchase this product.

The bill would give the TDLR commissioner broad authority to enforce the section, including through audits of the fees charged.

OPPONENTS
SAY:

SB 957 would create what would amount to an unregulated insurance product and would not protect consumers adequately. So many types of losses and damages could be excluded that the waivers would be worth little. For the coverage the consumer would receive, 10 percent of the rental price per month would very expensive. Some of the exclusions would be so vague (for example, mysterious disappearance) that they would leave the merchant too much discretion to deny coverage. Also, the bill would give too little regulatory authority to the TDLR, lacking provisions for denying registration or investigating consumer complaints over coercive practices and denial of claims.