HOUSE RESEARCH ORGANIZATION bill analysis | 5/20/2013 | SB 289 Carona (Schaefer)

SUBJECT: Discontinuing TDLR's review of loss damage waivers

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Workman

1 nay — Walle

SENATE VOTE: On final passage, March 13 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1532:)*
For — (*Registered, but did not testify:* Mark Vane, Gardere Wynne Sewell)

Against — None

On — William Kuntz, Texas Department of Licensing and Regulation; (*Registered, but did not testify:* Brian Francis, Texas Department of Licensing and Regulation)

BACKGROUND: The Business and Commerce Code, ch. 92 regulates rental-purchase agreements. The chapter defines "loss damage waiver" as a merchant's agreement not to hold a consumer liable for loss from all or part of any damage to merchandise.

Secs. 91.001 (2) and (4) provide the definitions of "commission" as the Texas Commission of Licensing and Regulation and "department" as the Texas Department of Licensing and Regulation.

Sec. 92.158 allows the commission to make rules for submitting any contract and amendments containing a loss damage waiver. Sec. 92.159 provides for the commission to charge the merchant a fee for a review of this contract and the administrative enforcement of the chapter.

Sec. 92.160 allows the department to enforce the chapter, receive and investigate complaints about a merchant, hold hearings and impose administrative penalties, and award the complainant damages not more than the contract price for the merchandise.

DIGEST:

Under SB 289, the Department of Licensing and Regulation no longer would have to approve a loss damage waiver; the bill instead would require that the loss damage waiver comply with Business and Commerce Code, ch. 92.

The bill would repeal Business and Commerce Code, subsecs. 92.001 (2) and (4), secs. 92.158, 92.159, and 92.160.

Administrative proceedings pending on the bill's effective date would be dismissed. Administrative penalties assessed before the effective date would be collected, and the department would return a prorated fee for reviewing a loss damage waiver to the merchant.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Loss damage waivers are frequently sold by merchants to a consumer on rent-to-own agreements on consumer goods, such as furniture and electronics. State law requires TDLR to review waivers before they are issued and allows for the department to investigate complaints and pursue enforcement action against those who do not adhere to these waivers. The bill would remove TDLR from the process of vetting and enforcing loss damage waivers, allowing it to focus resources on more urgent issues, while keeping in place the consumer protections of Business and Commerce Code, ch. 92. Consumers with a complaint about a loss damage waiver would have recourse through the Office of the Attorney General, which may file a Deceptive Trade Practices Act suit against the merchant.

TDLR reports no complaints have been filed against merchants regarding one of these waivers in the recent past. TDLR charges merchants a $300 fee to review a loss damage waiver.

When vetting the loss damage waivers, TDLR currently only determines whether the price of the loss damage waiver is clearly stated and if TDLR contact information is included in the contract. It does not enforce against any exemptions in a contract. Removing responsibility from TDLR would not weaken consumer coverage.

OPPONENTS SAY:

TDLR provides an important protection for customers and ensures that agreements between customers and merchants are even-handed and fair. The vetting of loss damage waivers provides a pre-emptive protection for customers, preventing them from having to seek enforcement action through filing a complaint later. Consumers who have an issue may find seeking recourse through the Office of the Attorney General and the courts more complicated than working through TDLR. Current law provides important opportunities for the department to exercise oversight over merchants.

If TDLR did not vet the loss damage waivers before they were issued, companies could take the opportunity to create more exceptions to waiver coverage, so customers could still be liable for certain types of damage.