

1 **H. B. 2379**

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3 (By Delegates Duke, Overington and Rowan)

4 [Introduced January 12, 2011; referred to the

5 Committee on Roads and Transportation then the
6 Judiciary.]

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10 A BILL to amend and reenact §46A-6-107 of the Code of West
11 Virginia, 1931, as amended, relating to disclaimers of
12 warranties with respect to goods which are the subject of or
13 are intended to become the subject of a consumer transaction;
14 prohibition against exclusion, modification or limitation of
15 any warranty or remedy; waiver of warranty on used motor
16 vehicle as to a particular defect or malfunction which dealer
17 has disclosed; conditions permitting "as is" sale of used
18 motor vehicle; conspicuous disclosure of "as is" sale; "as is"
19 sale does not waive express warranties made by dealer; and
20 requiring dealer to conform to federal regulations.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §46A-6-107 of the Code of West Virginia, 1931, be amended
23 and reenacted to read as follows:

24 **ARTICLE 6. GENERAL CONSUMER PROTECTION.**

1 **§46A-6-107. Disclaimer of warranties and remedies prohibited, as**
2 **to consumer goods.**

3 (a) Notwithstanding any other provision of law to the contrary
4 Except in the case of certain used motor vehicles as otherwise
5 provided in this section, with respect to goods which are the
6 subject of or are intended to become the subject of a consumer
7 transaction, ~~no a~~ merchant ~~shall~~ may not:

8 (1) Exclude, modify or otherwise attempt to limit any
9 warranty, express or implied, including the warranties of
10 merchantability and fitness for a particular purpose; or

11 (2) Exclude, modify or attempt to limit any remedy provided by
12 law, including the measure of damages available, for a breach of
13 warranty, express or implied.

14 Any such exclusion, modification or attempted limitation ~~shall~~
15 be is void.

16 (b) Except as otherwise provided in this section, an agreement
17 entered into by a consumer for the purchase of a used motor vehicle
18 that excludes, modifies or attempts to limit any warranty, express
19 or implied, including, the warranties of merchantability and
20 fitness for a particular purpose, is void as contrary to public
21 policy, and the dealer nevertheless shall be considered, as a
22 matter of law, to have given the warranty.

23 (c) Notwithstanding the provisions of subsections (a) and (b)
24 of this section, a consumer who purchases a used motor vehicle may

1 waive a warranty as to a particular defect or malfunction which
2 the dealer has disclosed in writing to the consumer. A waiver is
3 not effective unless the waiver:

4 (1) Is in writing;

5 (2) Is conspicuous and is in plain language;

6 (3) Identifies the particular disclosed defect or malfunction
7 in the used motor vehicle for which the warranty is to be waived;

8 (4) Describes any additional defects or malfunctions, if any;

9 (A) Disclosed to the dealer by a previous owner of the used
10 motor vehicle; (B) discoverable by the dealer through an inspection
11 of the used motor vehicle; and (C) that need to be repaired before
12 the used motor vehicle can comply with the motor vehicle inspection
13 and test laws set forth in article sixteen, chapter seventeen-c of
14 this code.

15 (5) States what warranty, if any, applies to any disclosed
16 defect or malfunction; and

17 (6) Is signed by both the consumer and the dealer before the
18 sales contract is executed.

19 (d) A motor vehicle may be sold "as is" and the prohibition
20 against exclusion, modification or limitation of any warranty or
21 remedy, as set forth in this section, does not apply to:

22 (1) A used motor vehicle sold for less than \$2,5000;

23 (2) A used motor vehicle that has been driven more than eighty
24 thousand actual miles at the time sold;

1 boldfaced type, except the heading, which must be in sixteen-point
2 extra boldfaced type. The entire notice must be boxed.

3 (3) The consumer shall sign the consumer's name and the date
4 within the box containing the disclaimer prior to the sale.

5 (4) An "as is" sale of a used motor vehicle waives implied
6 warranties, but does not waive any express warranties, either oral
7 or written, upon which the consumer relied in entering into the
8 transaction.

9 (5) In selling or offering to sell any used motor vehicle, and
10 in providing an express warranty, a dealer shall comply in all
11 respects with the Federal Trade Commission's "Used Motor Vehicle
12 Trade Regulation Rule," §16 CFR, 455.

NOTE: The purpose of this bill is to clearly explain all warranties for the sale of used cars including the requirements for "as is" sales.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.