

1 **H. B. 3041**

2  
3 (By Delegates McCuskey, R. Phillips, Hunt, Skaff,  
4 Storch, Ferns, Hartman, Craig and Andes)

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6 [Introduced March 21, 2013; referred to the  
7 Committee on Roads and Transportation then the  
8 Judiciary.]

9  
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; dealer  
20 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.**

25 **§46A-6-107. Disclaimer of warranties and remedies prohibited.**

1 ~~(a) Notwithstanding any other provision of law to the contrary~~  
2 Except in the case of certain used motor vehicles as otherwise  
3 provided in this section, with respect to goods which are the  
4 subject of or are intended to become the subject of a consumer  
5 transaction, no merchant ~~shall~~ may:

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

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

12 Any such exclusion, modification or attempted limitation ~~shall~~  
13 be is void.

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

21 (c) Notwithstanding the provisions of subsections (a) and (b)  
22 of this section, a consumer who purchases a used motor vehicle may  
23 waive a warranty as to a particular defect or malfunction which  
24 the dealer has disclosed in writing to the consumer. No such

1 waiver is effective unless the waiver:

2 (1) Is in writing;

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

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

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

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

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

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

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

20 (1) A used motor vehicle sold for less than \$2,500;

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

23 (3) A used motor vehicle that is seven years of age or older,  
24 calculated from January 1, of the designated model year of the

1 vehicle;

2 (4) A vehicle that has been custom built or modified for show  
3 purposes or racing; or

4 (5) A vehicle that is inoperable and a total loss.

5 For the purpose of this subsection, a vehicle is a "total  
6 loss" only if there is material damage to the vehicle's frame,  
7 unitized structure or suspension system, and the projected cost of  
8 repairing the damage exceeds the market value of the vehicle at the  
9 time of the incident causing it to be declared a total loss.

10 (e) A used motor vehicle may be sold "as is" by a dealer only  
11 if it falls within one or more of the exemptions set out in  
12 subsection (d) of this section. No "as is" disclaimer by a dealer  
13 is enforceable unless all of the following conditions are met:

14 (1) A disclaimer must appear on the front page of the contract  
15 of sale, and must read as follows:

16 **"AS IS"**

17 **THIS VEHICLE IS SOLD "AS IS". YOU WILL HAVE TO PAY FOR ANY REPAIRS**  
18 **NEEDED AFTER THE SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE**  
19 **LAW SAYS WE MUST KEEP OUR PROMISES EVEN IF WE SELL "AS IS". TO**  
20 **PROTECT YOURSELF, ASK US TO PUT ALL PROMISES IN WRITING.**

21 (2) The text of the disclaimer must be printed in twelve-point  
22 boldfaced type, except the heading, which must be in sixteen-point  
23 extra boldfaced type. The entire notice must be boxed.

24 (3) The consumer shall sign the consumer's name and the date

1 within the box containing the disclaimer prior to the sale.

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

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

NOTE: The purpose of this bill is to prohibit the exclusion, modification or limitation of any warranty or remedy in the sale of used motor vehicles; to allow a consumer to waive a warranty on used motor vehicle as to a particular defect or malfunction only if the dealer has disclosed the particular defect; to identify conditions permitting "as is" sales of used motor vehicles; to require conspicuous disclosure of "as is" sales; to clarify that "as is" sales do not waive express warranties made by a dealer; and to require dealers to conform to federal regulations concerning used motor vehicle sales.

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