

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 459

(By Senators Carmichael and D. Hall)

[Originating in the Committee on the Judiciary;
reported April 2, 2013.]

A BILL to amend and reenact §46A-6-107 of the Code of West Virginia, 1931, as amended, relating to disclaimers of warranties with respect to goods which are the subject of or are intended to become the subject of a consumer transaction; modifying prohibition against exclusion, modification or limitation of any warranty or remedy; allowing waiver of warranty on used motor vehicle as to a particular defect or malfunction which dealer has disclosed; permitting as-is sale of certain used motor vehicle; establishing conditions for as-is sales of certain used motor vehicles; requiring conspicuous disclosure of as-is sale; providing that as-is sale does not waive express warranties made by dealer; establishing limits on the

percentage of a dealer's inventory of used motor vehicles that may be sold to consumers as-is; prohibiting dealer sale of used motor vehicles without a valid West Virginia inspection sticker except in cases of incapacitated or total-loss vehicles where such vehicles are towed from dealer's premises; and requiring dealer to conform to federal regulations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. GENERAL CONSUMER PROTECTION.

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

1 ~~(a) Notwithstanding any other provision of law to the~~
2 ~~contrary~~ Except in the case of certain used motor vehicles
3 as otherwise provided in this section, with respect to goods
4 which are the subject of or are intended to become the
5 subject of a consumer 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
10 provided by law, including the measure of damages
11 available, for a breach of warranty, express or implied.

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

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

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

27 (1) Is in writing;

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

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

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

34 (A) Disclosed to the dealer by a previous owner of the
35 used motor vehicle; (B) discoverable by the dealer through
36 an inspection of the used motor vehicle; and (C) that must
37 be repaired before the used motor vehicle can comply with
38 the motor vehicle inspection and test laws set forth in article
39 sixteen, chapter seventeen-c of this code.

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

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

44 (d) A motor vehicle may be sold as-is and the
45 prohibition against exclusion, modification or limitation of

46 any warranty or remedy, as set forth in this section, may be
47 waived with respect to:

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

49 (2) A used motor vehicle that has been driven more
50 than seventy-five thousand actual miles at the time sold;

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

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

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

57 For the purpose of this subsection, a vehicle is a “total
58 loss” only if there is material damage to the vehicle’s frame,
59 unitized structure or suspension system, and the projected
60 cost of repairing the damage exceeds the market value of the
61 vehicle at the time of the incident causing it to be declared
62 a total loss: *Provided*, That restrictions as to the ability to
63 title such vehicles for road use as provided in section ten,
64 article four, chapter seventeen-a of this code are disclosed
65 are disclosed to the consumer at the time of sale.

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

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

73 “AS IS”
74 THIS VEHICLE IS SOLD “AS IS”. YOU WILL
75 HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER
76 THE SALE. IF WE HAVE MADE ANY PROMISES
77 TO YOU, THE LAW SAYS WE MUST KEEP OUR
78 PROMISES EVEN IF WE SELL “AS IS”. TO PROTECT
79 YOURSELF, ASK US TO PUT ALL PROMISES IN
80 WRITING.

81 (2) The text of the disclaimer must be printed in twelve-
82 point boldfaced type, except the heading, which must be in
83 sixteen-point extra boldfaced type. The entire notice must
84 be boxed.

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

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

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

96 (6) Motor vehicles offered for sale as-is may not
97 constitute more than twenty-five percent of a dealer's
98 inventory offered for sale to the general public.

99 (7) No dealer may sell any used motor vehicle to a
100 consumer that does not bear a valid motor vehicle inspection
101 sticker issued pursuant to the motor vehicle inspection and
102 test laws set forth in article sixteen, chapter seventeen-c of
103 this code: *Provided*, That a dealer may sell to a consumer

104 a used motor vehicle that is incapacitated or a total loss,
105 as defined in this section, without a valid motor vehicle
106 inspection sticker issued pursuant to the motor vehicle
107 inspection and test laws set forth in article sixteen, chapter
108 seventeen-c of this code where such motor vehicle is towed
109 from the dealer's premises.

(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.)