

1 **H. B. 2853**

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3 (By Delegates Hamrick, Ambler, Blair, Espinosa, Overington,
4 R. Phillips, Westfall, Cooper, McGeehan, Cadle and Ihle

5 [Introduced February 20, 2015; referred to the

6 Committee on Roads and Transportation then the Judiciary.]

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

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

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

20 **ARTICLE 6. GENERAL CONSUMER PROTECTION.**

21 **§46A-6-107. Disclaimer of warranties and remedies prohibited.**

22 (a) (1) Notwithstanding any other provision of law to the contrary Except in the case of

1 certain used motor vehicles as otherwise provided in this section, with respect to goods which are
2 the subject of or are intended to become the subject of a consumer transaction, no merchant ~~shall~~
3 may:

4 (†) (A) Exclude, modify or otherwise attempt to limit any warranty, express or implied,
5 including the warranties of merchantability and fitness for a particular purpose; or

6 (‡) (B) Exclude, modify or attempt to limit any remedy provided by law, including the
7 measure of damages available, for a breach of warranty, express or implied.

8 (2) Any such exclusion, modification or attempted limitation ~~shall be~~ is void.

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

14 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, a consumer who
15 purchases a used motor vehicle may waive a warranty as to a particular defect or malfunction which
16 the dealer has disclosed in writing to the consumer. The waiver is not effective unless the waiver:

17 (1) Is in writing;

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

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

21 (4) Describes any additional defects or malfunctions, if any:

22 (A) Disclosed to the dealer by a previous owner of the used motor vehicle;

1 (B) Discoverable by the dealer through an inspection of the used motor vehicle; and

2 (C) That must be repaired before the used motor vehicle can comply with the motor vehicle
3 inspection and test laws set forth in article sixteen, chapter seventeen-c of this code;

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

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

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

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

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

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

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

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

15 (e) For the purpose of subsection (d) of this section, a vehicle is a "total loss" only if there
16 is material damage to the vehicle's frame, unitized structure or suspension system, and the projected
17 cost of repairing the damage exceeds the market value of the vehicle at the time of the incident
18 causing it to be declared a total loss.

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

22 (1) A disclaimer must appear on the front page of the contract of sale, and shall read as

1 follows:

2 "AS IS"

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

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

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

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

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