

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 43

BY SENATOR TRUMP

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §46A-6-107 of the Code of West Virginia, 1931, as amended; and
 2 to amend said code by adding thereto two new sections, designated §46A-6-107a and
 3 §46A-6-107b, all relating generally to warranties for used motor vehicles; providing that a
 4 consumer who purchases a used motor vehicle may waive a warranty as to a particular
 5 defect or malfunction which the merchant has disclosed in writing to the consumer;
 6 providing that a waiver of warranties is not effective unless the waiver satisfies certain
 7 requirements; providing that a used motor vehicle may only be sold “as is” under certain
 8 circumstances; providing certain disclosure requirements for “as is” sales of used motor
 9 vehicles; providing that a consumer shall sign and date the disclosure for an “as is” sale
 10 in order for the disclosure to be effective; providing that a merchant disclose in writing
 11 certain defects or malfunctions when selling a used motor vehicle “as is”; providing that
 12 the merchant shall provide the consumer a copy of a nationally recognized vehicle history
 13 report for the used motor vehicle; and providing that an “as is” sale of a used motor vehicle
 14 waives implied warranties but does not waive any express warranties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

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

1 (a) Except as otherwise provided in ~~subsection (b) of this section~~ this article, with respect
 2 to goods which are the subject of or are intended to become the subject of a consumer
 3 transaction, no merchant may:

4 (1) 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 (2) Exclude, modify or attempt to limit any remedy provided by law, including the measure
 7 of damages available, for a breach of warranty, express, or implied.

8 Any such exclusion, modification or attempted limitation is void, except as otherwise
 9 provided in this article.

10 (b) A consumer who purchases a used manufactured home may waive the warranties of
11 merchantability and fitness for a particular purpose, or waive a warranty as to a particular defect
12 or malfunction which the merchant has identified and disclosed in writing to the consumer, if the
13 used manufactured home is not being sold for human habitation: *Provided*, That notice be posted
14 on the front door of the used manufactured home that it is not being sold for human habitation:
15 *Provided*, however, That the waiver is not effective unless the waiver:

16 (1) Is in writing;

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

18 (3) Identifies with particularity the disclosed defect or malfunction, if any, in the used
19 manufactured home for which the warranty is to be waived;

20 (4) Describes any additional defects or malfunctions, if any, disclosed to the merchant by
21 a previous owner of the used manufactured home or discoverable by the merchant after an
22 inspection of the used manufactured home;

23 (5) States that the warranty being waived applies only to the disclosed defect or
24 malfunction, if any, to the extent the merchant intends to waive a warranty as to a specific defect;

25 (6) Acknowledges that the used manufactured home will not be used for human habitation:
26 *Provided*, That the consumer shall sign or initial such provision in order to evidence the
27 consumer's acknowledgment thereof; and

28 (7) Is signed by both the consumer and the merchant before the sales contract is executed.

29 For purposes of this subsection, "used manufactured home" means a manufactured home,
30 as defined in §21-9-2 of this code, that is more than four years old from its date of production and
31 has previously been occupied, used, or sold for purposes other than resale.

§46A-6-107a. Waiver of warranties for used motor vehicles.

1 Notwithstanding the provisions of §46A-6-107 of this code, a consumer who purchases a
2 used motor vehicle may waive a warranty as to a particular defect or malfunction which the
3 merchant has disclosed in writing to the consumer. The waiver is not effective unless the waiver:

- 4 (1) Is in writing;
- 5 (2) Is conspicuous and is in plain language;
- 6 (3) Identifies with particularity the disclosed defect or malfunction in the used motor vehicle
7 for which the warranty is to be waived;
- 8 (4) Describes any additional defects or malfunctions, if any, disclosed to the merchant by
9 a previous owner of the used motor vehicle, discoverable by the merchant after an inspection of
10 the used motor vehicle, or that must be repaired before the used motor vehicle can comply with
11 the motor vehicle inspection and test laws set forth in §17C-16-1 et seq. of this code;
- 12 (5) States that the warranty being waived applies to the disclosed defect or malfunction;
13 and
- 14 (6) Is signed by both the consumer and the merchant before the sales contract is executed.

§46A-6-107b. Used motor vehicles sold “as is”.

- 1 (a) Notwithstanding the provisions of §46A-6-107 of this code a used motor vehicle may
2 be sold “as is” if:
- 3 (1) The used motor vehicle is sold for less than \$2,500;
- 4 (2) The used motor vehicle has been driven more than 80,000 miles at the time sold;
- 5 (3) The used motor vehicle is seven years of age or older, calculated from January 1, of
6 the designated model year of the vehicle;
- 7 (4) The vehicle has been custom built or modified for show purposes or racing; or
- 8 (5) The vehicle is inoperable and a total loss.
- 9 (b) For the purposes of this section, a used motor vehicle is a “total loss” only if there is
10 material damage to the vehicle’s frame, unitized structure or suspension system, and the
11 projected cost of repairing the damage exceeds the market value of the vehicle at the time of the
12 incident causing it to be declared a total loss.
- 13 (c) If a used motor vehicle is sold “as is” pursuant to §46A-6-107b(a) of this code, a
14 merchant must satisfy the following disclaimer requirements:

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

17 **“AS IS”**

18 **THIS VEHICLE IS SOLD “AS IS.” THIS MEANS THAT YOU WILL LOSE YOUR**
19 **IMPLIED WARRANTIES. YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER**
20 **THE SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW SAYS WE MUST KEEP**
21 **OUR PROMISES EVEN IF WE SELL “AS IS.” TO PROTECT YOURSELF, ASK US TO PUT**
22 **ALL PROMISES IN WRITING.**

23 (2) The text of the disclaimer must be printed in 12-point boldfaced type, except the
24 heading, which must be in 16-point extra boldfaced type. The entire disclaimer must be boxed;

25 (3) The consumer shall sign and date within the box containing the disclaimer prior to the
26 sale;

27 (4) The merchant shall describe in writing any defects or malfunctions, if any, disclosed to
28 the merchant by a previous owner of the used motor vehicle, discoverable by the merchant after
29 an inspection of the used motor vehicle, or that must be repaired before the used motor vehicle
30 can comply with the motor vehicle inspection and test laws set forth in §17C-16-1 et seq. of this
31 code; and

32 (5) The merchant shall provide the consumer a copy of a nationally recognized vehicle
33 history report for the used motor vehicle.

34 (d) An “as is” sale of a used motor vehicle waives implied warranties, but does not waive
35 any express warranties, either oral or written, upon which the consumer relied in entering into the
36 transaction.

NOTE: The purpose of this bill is to provide that a consumer who purchases a used motor vehicle may waive a warranty as to a particular defect or malfunction which the merchant has disclosed in writing to the consumer. The bill provides that a waiver of warranties is not effective unless the waiver satisfies certain requirements. The bill provides that a used motor vehicle may only be sold “as is” under certain circumstances. The bill provides

certain disclosure requirements for “as is” sales of used motor vehicles. The bill provides that a consumer shall sign and date the disclosure for an “as is” sale in order for the disclosure to be effective. The bill provides that a merchant discloses in writing certain defects or malfunctions when selling a used motor vehicle “as is”. The bill provides that the merchant shall provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle. The bill provides that an “as is” sale of a used motor vehicle waives implied warranties but does not waive any express warranties.

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