

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 657

BY SENATOR SYPOLT

[Introduced February 18, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §19-37-1 and §19-37-2, all relating to providing protection to consumers if self-
 3 propelled farm equipment fails to conform to warranties; and requiring manufacturers and
 4 dealers to refund, replace, and repair the equipment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 37. AGRICULTURAL MATERIALS AND EQUIPMENT.

§19-37-1. Definitions.

1 As used in this article unless the context requires otherwise:

2 “Agricultural equipment” means any self-propelled vehicle designed primarily for and used
 3 in the occupation or business of farming with a horsepower unit of 35 or greater.

4 “Consumer” means a purchaser, other than for purposes of resale, of new agricultural
 5 equipment or any subsequent purchaser, other than for purpose of resale, to whom such
 6 equipment is transferred during the duration of a manufacturer’s express written warranty
 7 applicable to such equipment.

§19-37-2. Protection against defective agricultural equipment.

8 (a) If agricultural equipment does not conform to all applicable express written warranties,
 9 and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer
 10 during the term of the express written warranties or during the period of one year following the
 11 date of original delivery of the equipment to the first consumer, whichever is the earlier date, the
 12 manufacturer shall make such repairs as are necessary to conform the equipment to the express
 13 written warranties, notwithstanding the fact that the repairs are made after the expiration of the
 14 term of the express warranty or the one-year period.

15 (b) If the manufacturer does not conform the equipment to any applicable express written
 16 warranty by repairing or correcting any defect or condition which substantially impairs the use and
 17 market value of the equipment to the consumer after a reasonable number of attempts, the
 18 manufacturer shall:

19 (1) Replace the equipment with comparable equipment acceptable to the consumer,
20 charging the consumer only a reasonable allowance for the consumer's prior use of the
21 equipment; or

22 (2) Accept the return of the equipment from the consumer and refund to the consumer the
23 cash purchase price, including sales tax, license fees, registration fees and any similar
24 governmental charges, less such a reasonable allowance for prior use. Refunds shall be made to
25 the consumer and lien holder or holder of a security interest, if any, as their interests may appear.

26 (c) The reasonable allowance for prior use, which shall be no less than the fair rental value
27 of the equipment, shall be the sum of:

28 (1) That amount attributable to use by the consumer or others prior to the consumer's first
29 report of the nonconformity to the manufacturer or its authorized dealers;

30 (2) That amount attributable to use by the consumer or others during any period
31 subsequent to a report when the vehicle is not out of service by reason of repair of the reported
32 nonconformity; and

33 (3) That amount attributable to use by the consumer of equipment provided by the
34 manufacturer or its authorized dealers while the equipment is out of service by reason of repair
35 of the reported nonconformity.

36 (d) For purposes of this article, within the express written warranty term or during the
37 period of one year following the date of the original delivery of the equipment to the first consumer,
38 whichever is the earlier date, it is presumed that a reasonable number of attempts have been
39 undertaken to conform equipment to the applicable express written warranties if:

40 (1) The same nonconformity has been subject to repair four or more times by the
41 manufacturer or its authorized dealers, but such nonconformity continues to exist; or

42 (2) The equipment is out of service by reason of repair for a cumulative total of 30 or more
43 calendar days. However, those days may not be counted when the consumer has been provided
44 by the manufacturer or its authorized dealers with the use of other equipment which performs the

45 same function or has been offered the use of the equipment.

46 (e) In no event may the presumption provided in this section apply against a manufacturer
47 unless the manufacturer has received prior direct written notification from or on behalf of the
48 consumer and been offered an opportunity to cure the alleged defect. If the address of the
49 manufacturer is not readily available to the consumer, the written notification shall be mailed to
50 an authorized dealer. The authorized dealer shall forward such notification to the manufacturer.

51 (f) It is an affirmative defense to any claim under this article that;

52 (1) An alleged nonconformity does not substantially impair the use and market value; or

53 (2) A nonconformity is the result of abuse or neglect, or of modifications or alterations of
54 the equipment not authorized by the manufacturer.

55 (g) Any action brought under this article shall be commenced within six months following
56 that later of:

57 (1) Expiration of the express written warranty term; or

58 (2) Eighteen months following the date of the original delivery of the equipment to the
59 consumer.

60 (h) This article applies to agricultural equipment sold after January 1, 2019.

61 (i) Nothing in this article may in any way limit or impair the rights or remedies which are
62 otherwise available to a consumer under any other law.

63 (j) Any consumer who suffers a loss by reason of a violation of any provision of this article
64 may bring a civil action to enforce such provision.

NOTE: The purpose of this bill is to provide consumer protection for consumers of self-propelled agricultural equipment.

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