

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 459**

4 (By Senators Carmichael and D. Hall)

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6 [Originating in the Committee on the Judiciary;
7 reported April 2, 2013.]
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11 A BILL to amend and reenact §46A-6-107 of the Code of West
12 Virginia, 1931, as amended, relating to disclaimers of
13 warranties with respect to goods which are the subject of or
14 are intended to become the subject of a consumer transaction;
15 modifying prohibition against exclusion, modification or
16 limitation of any warranty or remedy; allowing waiver of
17 warranty on used motor vehicle as to a particular defect or
18 malfunction which dealer has disclosed; permitting as-is sale
19 of certain used motor vehicle; establishing conditions for as-
20 is sales of certain used motor vehicles; requiring conspicuous
21 disclosure of as-is sale; providing that as-is sale does not
22 waive express warranties made by dealer; establishing limits
23 on the percentage of a dealer's inventory of used motor
24 vehicles that may be sold to consumers as-is; prohibiting

1 dealer sale of used motor vehicles without a valid West
2 Virginia inspection sticker except in cases of incapacitated
3 or total-loss vehicles where such vehicles are towed from
4 dealer's premises; and requiring dealer to conform to federal
5 regulations.

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

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

9 **ARTICLE 6. GENERAL CONSUMER PROTECTION.**

10 **§46A-6-107. Disclaimer of warranties and remedies prohibited.**

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

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

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

22 Any such exclusion, modification or attempted limitation ~~shall~~
23 be is void.

24 (b) Except as otherwise provided in this section, an agreement

1 entered into by a consumer for the purchase of a used motor vehicle
2 that excludes, modifies or attempts to limit any warranty, express
3 or implied, including the warranties of merchantability and fitness
4 for a particular purpose is void as contrary to public policy, and
5 the dealer nevertheless shall be considered, as a matter of law, to
6 have given the warranty.

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

12 (1) Is in writing;

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

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

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

17 (A) Disclosed to the dealer by a previous owner of the used
18 motor vehicle; (B) discoverable by the dealer through an inspection
19 of the used motor vehicle; and (C) that must be repaired before the
20 used motor vehicle can comply with the motor vehicle inspection and
21 test laws set forth in article sixteen, chapter seventeen-c of this
22 code.

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

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

3 (d) A motor vehicle may be sold as-is and the prohibition
4 against exclusion, modification or limitation of any warranty or
5 remedy, as set forth in this section, may be waived with respect
6 to:

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

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

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

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

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

16 For the purpose of this subsection, a vehicle is a "total
17 loss" only if there is material damage to the vehicle's frame,
18 unitized structure or suspension system, and the projected cost of
19 repairing the damage exceeds the market value of the vehicle at the
20 time of the incident causing it to be declared a total loss:
21 Provided, That restrictions as to the ability to title such
22 vehicles for road use as provided in section ten, article four,
23 chapter seventeen-a of this code are disclosed to the consumer at
24 the time of sale.

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

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

7 **"AS IS"**

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

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

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

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

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

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

4 (7) No dealer may sell any used motor vehicle to a consumer
5 that does not bear a valid motor vehicle inspection sticker issued
6 pursuant to the motor vehicle inspection and test laws set forth in
7 article sixteen, chapter seventeen-c of this code: *Provided, That*
8 a dealer may sell to a consumer a used motor vehicle that is
9 incapacitated or a total loss, as defined in this section, without
10 a valid motor vehicle inspection sticker issued pursuant to the
11 motor vehicle inspection and test laws set forth in article
12 sixteen, chapter seventeen-c of this code where such motor vehicle
13 is towed 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.)