

1 **ARTICLE 6. GENERAL CONSUMER PROTECTION.**

2 **§46A-6-107. Disclaimer of warranties and remedies prohibited.**

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

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

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

14 Any such exclusion, modification or attempted limitation ~~shall~~
15 be is void.

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

23 (c) Notwithstanding the provisions of subsections (a) and (b)

1 of this section, a consumer who purchases a used motor vehicle may
2 waive a warranty as to a particular defect or malfunction which the
3 dealer has disclosed in writing to the consumer. No such waiver is
4 effective unless the waiver:

5 (1) Is in writing;

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

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

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

10 (A) Disclosed to the dealer by a previous owner of the used
11 motor vehicle; (B) discoverable by the dealer through an inspection
12 of the used motor vehicle; and (C) that must be repaired before the
13 used motor vehicle can comply with the motor vehicle inspection and
14 test laws set forth in article sixteen, chapter seventeen-c of this
15 code.

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

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

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

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

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

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

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

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

9 For the purpose of this subsection, a vehicle is a "total
10 loss" only if there is material damage to the vehicle's frame,
11 unitized structure or suspension system, and the projected cost of
12 repairing the damage exceeds the market value of the vehicle at the
13 time of the incident causing it to be declared a total loss.

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

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

20 **"AS IS"**

21 **THIS VEHICLE IS SOLD "AS IS". YOU WILL HAVE TO PAY FOR ANY REPAIRS**
22 **NEEDED AFTER THE SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE**
23 **LAW SAYS WE MUST KEEP OUR PROMISES EVEN IF WE SELL "AS IS". TO**

1 PROTECT YOURSELF, ASK US TO PUT ALL PROMISES IN WRITING.

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

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

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

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