

H. B. 2941

(By Delegates McCuskey and Lynch)

[Introduced February 24, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §46A-6-107 of the Code of West Virginia, 1931, as amended, relating to conditions under which used manufactured homes may be sold with warranty exclusions, limitations or modifications; allowing used manufactured homes to be sold with warranty limitations; allowing a waiver of warranties of particular defects disclosed in writing; establishing conditions permitting as is sales of used manufactured homes; and requiring conspicuous disclosure of as-is sale conditions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. GENERAL CONSUMER PROTECTION.

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

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

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

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

5 (b) Subsection (a) shall not be applicable to the sale of used manufactured homes. A
6 manufactured home may be sold with warranty, that includes express or implied limitations, or
7 without any warranty, express or implied, if the following conditions exist:

8 (1) The manufactured home is more than four years old from its date of production; and

9 (2) The manufactured home has been in use by any person longer than three years.

10 (c) A consumer who purchases a used manufactured home may waive a warranty as to a
11 particular defect or malfunction which the dealer has disclosed in writing to the consumer. The
12 waiver is not effective unless the waiver:

13 (1) Is in writing;

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

15 (3) Identifies the particular disclosed defect or malfunction in the used manufactured home
16 for which the warranty is to be waived;

17 (4) Describes any additional defects or malfunctions, if any, which are:

18 (A) Disclosed to the dealer by a previous owner of the used manufactured home; or

19 (B) Discoverable by the dealer through an inspection of the used manufactured home.

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

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

22 (d) A used manufactured home which meets the age requirement contained in subdivision

1 (1), subsection (b) may be sold "as is" or without any warranty, express or implied, if:

2 (1) A disclaimer appears on the front page of the contract of sale, which shall read as follows:

3 **"AS IS"**

4 **THIS MANUFACTURED HOME IS SOLD "AS IS." YOU WILL HAVE TO PAY**

5 **FOR ANY REPAIRS NEEDED AFTER THE SALE. IF WE HAVE MADE ANY PROMISES**

6 **TO YOU, THE LAW SAYS WE MUST KEEP OUR PROMISES EVEN IF WE SELL "AS**

7 **IS". TO PROTECT YOURSELF, ASK US TO PUT ALL PROMISES IN WRITING.**

8 (2) The text of the disclaimer must be printed in twelve-point boldfaced type in all capital

9 letters, except the heading, which must be in sixteen-point extra boldfaced type centered on the first

10 line of the disclaimer. The entire notice is to be boxed.

11 (3) The consumer has signed the consumer's name and the date within the box containing the

12 disclaimer, prior to sale.

13 ~~Any such exclusion, modification or attempted limitation shall be void.~~

NOTE: The purpose of this bill is to establish conditions under which used manufactured homes may be sold with warranty exclusions, limitations or modifications; to allow used manufactured homes to be sold with warranty limitations; to allow a waiver of warranties of particular defects disclosed in writing; to establish conditions permitting as is sales of used manufactured homes; and to require conspicuous disclosure of as is sale conditions.

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