

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 106

BY SENATOR TRUMP

[Introduced January 13, 2016;

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,
 2 relating to disclaimers of warranties with respect to goods which are the subject of or are
 3 intended to become the subject of a consumer transaction; prohibition against exclusion,
 4 modification or limitation of any warranty or remedy; waiver of warranty on used
 5 manufactured homes as to a particular defect or malfunction which dealer has disclosed;
 6 conditions permitting “as is” sale of used manufactured homes; conspicuous disclosure of
 7 “as is” sale; “as is” sale does not waive express warranties made by dealer; and dealer to
 8 conform to federal regulations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. GENERAL CONSUMER PROTECTION.

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

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

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

7 (2) Exclude, modify or attempt to limit any remedy provided by law, including the measure
 8 of damages available, for a breach of warranty, express or implied, except as provided in
 9 subsections (b) and (c) of this section relating to the sale of used manufactured homes. ~~Any~~
 10 ~~such exclusion, modification or attempted limitation shall be void.~~

11 (b) A manufactured home may be sold with warranty, express or implied, with limitations
 12 or without any warranty, express or implied, if the manufactured home is more than four years old
 13 from its date of production and has been in use by any person longer than three years.

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

17 (1) Is in writing;

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

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

21 (4) Describes any additional defects or malfunctions, if any, which have been disclosed to
22 the dealer by a previous owner of the used manufactured home; or are discoverable by the dealer
23 through an inspection of the used manufactured home at the time of sale;

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

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

26 (d) A used manufactured home which meets the age requirement contained in subsection
27 (b) of this section, may be sold "as is" or without any warranty, express or implied, if the following
28 three conditions are met.

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

31 **"AS IS"**

32 **THIS MANUFACTURED HOME IS SOLD "AS IS." YOU WILL HAVE TO PAY FOR ANY**
33 **REPAIRS NEEDED AFTER THE SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE**
34 **LAW SAYS WE MUST KEEP OUR PROMISES EVEN IF WE SELL "AS IS". TO PROTECT**
35 **YOURSELF, ASK US TO PUT ALL PROMISES IN WRITING.**

36 (2) The entire notice is boxed and the text of the disclaimer is printed in twelve-point
37 boldfaced type in all capital letters, except the heading, which must be in sixteen-point extra
38 boldfaced type centered on the first line of the disclaimer.

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

40 the disclaimer, prior to sale.

NOTE: The purpose of this bill is to prohibit exclusion, modification or limitation of any warranty or remedy in the sale of used manufactured homes; to allow a consumer to waive a warranty on used manufactured homes as to a particular defect or malfunction only if the retailer has disclosed the particular defect; to identify conditions permitting "as is" sales of used manufactured homes, and to require conspicuous disclosure of "as is" sales.

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