

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)
24 of this section, a consumer who purchases a used motor vehicle may

1 waive a warranty as to a particular defect or malfunction which the
2 dealer has disclosed in writing to the consumer. No such waiver is
3 effective unless the waiver:

4 (1) Is in writing;

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

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

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

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

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

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

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

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

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

1 boldfaced type, except the heading, which must be in sixteen-point
2 extra boldfaced type. The entire notice must be boxed.

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

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

9 (5) In selling or offering to sell any used motor vehicle, and
10 in providing an express warranty, a dealer shall comply in all
11 respects with the Federal Trade Commission's "Used Motor Vehicle
12 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.