

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4205

BY DELEGATES COWLES, HOWELL, FAIRCLOTH, PERRY,
LYNCH, MCCUSKEY, SOBONYA, DEEM, OVERINGTON AND
KESSINGER

[Introduced January 21, 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 and exclusions of warranties in consumer transactions for goods;
 3 permitting waivers of warranty for defects and malfunctions in certain used manufactured
 4 homes; permitting waivers of express and implied warranties in the sale of certain used
 5 manufactured homes; and rendering all noncompliant exclusions, modifications and
 6 limitations of warranties void.

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 with respect to goods which
 2 are the subject of or are intended to become the subject of a consumer transaction, no merchant
 3 shall ~~may~~:

4 (1) Exclude, modify or otherwise attempt to limit any warranty, express or implied,
 5 including the warranties of merchantability and fitness for a particular purpose, except in the case
 6 of the sale of certain used manufactured homes under circumstances described in subsection (b)
 7 of this section; or

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

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

11 (b) When a manufactured home is more than four years old from its date of production
 12 and has been in use by any one person for more than three continuous years, the sale of the
 13 used manufactured home may be negotiated and completed with the following limitations of
 14 warranties under the conditions provided below:

15 (1) Waiver of particular defect – A consumer may waive a warranty as to a particular defect

16 or malfunction when the merchant of the used manufactured home provides a written disclosure
17 of the defect or malfunction. The waiver is not effective unless the waiver is made under the
18 following circumstances:

19 (A) The waiver must be in writing and in plain language;

20 (B) The written waiver document clearly identifies the particular defect or malfunction of
21 the used manufactured home for which the warranty is to be waived;

22 (C) The written waiver document also describes all additional defects or malfunctions, if
23 any, that have been disclosed to the merchant by a previous owner of the used manufactured
24 home and that may be discoverable by the merchant through a reasonable inspection of the
25 home;

26 (D) The written waiver document clearly states what warranty, if any, applies to the
27 disclosed defect or malfunction and clearly states that the waiver does not apply to any other
28 condition, function or aspect of the used manufactured home and the sale; and

29 (E) The consumer and the merchant both sign the written waiver document before the
30 sales contract is executed.

31 (2) "As Is" warranty – The used manufactured home may be sold "as is" or without any
32 express or implied warranties under the following circumstances:

33 (A) The contract for sale of the used manufactured home contains a disclaimer, printed in
34 bold-faced type no smaller than 12 points in size with a heading in bold-faced type no smaller
35 than 16 points in size, with the entire notice contained in a box or lined border, to read as follows:

36 **"AS IS"**

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

41 And;

42 (B) The consumer places his or her signature and date within the box containing this
43 disclaimer prior to completing the contract for sale.

44 (c) Any exclusion, modification or attempted limitation of warranties that is made in
45 violation of this section shall be void and may not be enforced to the prejudice of the consumer.

NOTE: The purpose of this bill is to permit the sale of used manufactured homes with “as is” warranties or sale with waivers of warranties as to defects disclosed by the merchant.

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