

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 241

BY SENATORS TRUMP AND BLAIR

[Introduced January 11, 2018; 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; and
 2 to amend said code by adding thereto two new sections, designated §46A-6-107a and
 3 §46A-6-107b, all relating generally to warranties for used motor vehicles; providing that a
 4 consumer who purchases a used motor vehicle may waive a warranty as to a particular
 5 defect or malfunction which the merchant has disclosed in writing to the consumer;
 6 providing that a waiver of warranties is not effective unless the waiver satisfies certain
 7 requirements; providing that a used motor vehicle may only be sold “as is” under certain
 8 circumstances; providing certain disclosure requirements for “as is” sales of used motor
 9 vehicles; providing that a consumer shall sign and date the disclosure for an “as is” sale
 10 in order for the disclosure to be effective; providing that a merchant disclose in writing
 11 certain defects or malfunctions when selling a used motor vehicle “as is”; providing that
 12 the merchant shall provide the consumer a copy of a nationally recognized vehicle history
 13 report for the used motor vehicle; and providing that an “as is” sale of a used motor vehicle
 14 waives implied warranties but does not waive any express warranties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

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

1 ~~Notwithstanding any other provision of law to the contrary~~ Except as otherwise provided
 2 in this article, with respect to goods which are the subject of or are intended to become the subject
 3 of a consumer transaction, no merchant shall:

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; or

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

8 Any such exclusion, modification or attempted limitation ~~shall be~~ is void, except as
 9 otherwise provided in this article.

§46A-6-107a. Waiver of warranties for used motor vehicles.

1 Notwithstanding the provisions of §46A-6-107 of this code, a consumer who purchases a
2 used motor vehicle may waive a warranty as to a particular defect or malfunction which the
3 merchant has disclosed in writing to the consumer. The waiver is not effective unless the waiver:

4 (1) Is in writing;

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

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

8 (4) Describes any additional defects or malfunctions, if any, disclosed to the merchant by
9 a previous owner of the used motor vehicle, discoverable by the merchant after an inspection of
10 the used motor vehicle, or that must be repaired before the used motor vehicle can comply with
11 the motor vehicle inspection and test laws set forth in §17C-16-1 et seq. of this code;

12 (5) States that the warranty being waived applies to the disclosed defect or malfunction;
13 and

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

§46A-6-107b. Used motor vehicles sold “as is”.

1 (a) Notwithstanding the provisions of §46A-6-107 of this code a used motor vehicle may
2 be sold “as is” if:

3 (1) The used motor vehicle is sold for less than \$2,500;

4 (2) The used motor vehicle has been driven more than eighty thousand miles at the time
5 sold;

6 (3) The used motor vehicle is seven years of age or older, calculated from January 1, of
7 the designated model year of the vehicle;

8 (4) The vehicle has been custom built or modified for show purposes or racing; or

9 (5) The vehicle is inoperable and a total loss.

10 (b) For the purposes of this section, a used motor vehicle is a “total loss” only if there is

11 material damage to the vehicle’s frame, unitized structure or suspension system, and the
12 projected cost of repairing the damage exceeds the market value of the vehicle at the time of the
13 incident causing it to be declared a total loss.

14 (c) If a used motor vehicle is sold “as is” pursuant to subsection (a) of this section, a
15 merchant must satisfy the following disclaimer requirements:

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

18 **“AS IS”**

19 **THIS VEHICLE IS SOLD “AS IS.” THIS MEANS THAT YOU WILL LOSE YOUR**
20 **IMPLIED WARRANTIES. YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER**
21 **THE SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW SAYS WE MUST KEEP**
22 **OUR PROMISES EVEN IF WE SELL “AS IS.” TO PROTECT YOURSELF, ASK US TO PUT**
23 **ALL PROMISES IN WRITING.**

24 (2) The text of the disclaimer must be printed in 12-point boldfaced type, except the
25 heading, which must be in 16-point extra boldfaced type. The entire disclaimer must be boxed;

26 (3) The consumer shall sign and date within the box containing the disclaimer prior to the
27 sale;

28 (4) The merchant shall describe in writing any defects or malfunctions, if any, disclosed to
29 the merchant by a previous owner of the used motor vehicle, discoverable by the merchant after
30 an inspection of the used motor vehicle, or that must be repaired before the used motor vehicle
31 can comply with the motor vehicle inspection and test laws set forth in §17C-16-1 et seq. of this
32 code; and

33 (5) The merchant shall provide the consumer a copy of a nationally recognized vehicle
34 history report for the used motor vehicle.

35 (d) An “as is” sale of a used motor vehicle waives implied warranties, but does not waive
36 any express warranties, either oral or written, upon which the consumer relied in entering into the

37 transaction.

NOTE: The purpose of this bill is to provide that a consumer who purchases a used motor vehicle may waive a warranty as to a particular defect or malfunction which the merchant has disclosed in writing to the consumer. The bill provides that a waiver of warranties is not effective unless the waiver satisfies certain requirements. The bill provides that a used motor vehicle may only be sold "as is" under certain circumstances. The bill provides certain disclosure requirements for "as is" sales of used motor vehicles. The bill provides that a consumer shall sign and date the disclosure for an "as is" sale in order for the disclosure to be effective. The bill provides that a merchant disclose in writing certain defects or malfunctions when selling a used motor vehicle "as is". The bill provides that the merchant shall provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle. The bill provides that an "as is" sale of a used motor vehicle waives implied warranties but does not waive any express warranties.

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