WEST VIRGINIA CODE CHAPTER 46B ARTICLE 2

WV Legislature

§46B-2-1 Statute of Frauds.

(a) A rental agreement is not enforceable by a dealer by way of action or defense unless there is a writing, signed by both the dealer or his or her agent or employee and the consumer, sufficient to indicate that a rent-to-own agreement has been made between the parties, reasonably identifying and describing the consumer goods to be rented. Any purported rent-to-own agreement entered into without a written agreement may be voided by the consumer, who may return the consumer goods and be refunded all amounts previously paid to the dealer under the purported rental agreement.

(b) A rental agreement is not enforceable by a dealer against a consumer unless the written agreement contains all disclosures required by the provisions of this chapter, and unless a copy of the written agreement is delivered to the consumer contemporaneously with the execution of the written agreement. Any written agreement executed by a consumer which does not comply with the requirements of this subsection may be voided by the consumer.

WV Legislature

§46B-2-2. Unconscionability.

(a) If the court as a matter of law finds a rental agreement or any clause of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, or it may enforce the remainder of the rental agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) With respect to a consumer rental agreement, if the court as a matter of law finds that a rental agreement or any clause of a rental agreement has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a rental agreement, the court may grant appropriate relief.

(c) Before making a finding of unconscionability under subsection (a) or (b) of this section, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or clause thereof, or of the conduct.

(d) In an action in which the consumer claims unconscionability with respect to a rental agreement:

(1) If the court finds unconscionability under subsection (a) or (b) of this section, the court shall award reasonable attorney's fees to the consumer.

(2) If the court does not find unconscionability and the consumer claiming unconscionability has brought or maintained an action he or she knew to be groundless, the court shall award reasonable attorney's fees to the dealer against whom the claim is made.

(3) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (a) and (b) of this section is not controlling.

WV Legislature

§46B-2-3. Express warranties.

(a) Express warranties by the dealer are created as follows:

(1) Any affirmation of fact or promise made by the dealer to the consumer which relates to the consumer goods is part of the basis of the bargain and creates an express warranty that the consumer goods will conform to the affirmation or promise;

(2) Any description of the consumer goods is part of the basis of the bargain and creates an express warranty that the consumer goods will conform to the description;

(3) Any sample or model exhibited to the consumer by the dealer is part of the basis of the bargain and creates an express warranty that the consumer goods actually delivered to the consumer will conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the dealer use formal words, such as "warrant" or "guarantee", or that the dealer have a specific intention to make a warranty, but an affirmation merely of the value of the consumer goods or a statement purporting to be merely the dealer's opinion or commendation of the consumer goods does not create a warranty.

WV Legislature

§46B-2-4. Implied warranty of merchantability.

(a) A warranty that the consumer goods will be merchantable is implied in every contract for the rental of consumer goods if the dealer is a merchant with respect to consumer goods of that kind.

(b) Consumer goods to be merchantable must be at least such as:

(1) Pass without objection in the trade under the description in the rental agreement;

(2) Are fit for the ordinary purposes for which consumer goods of that type are used; and

(3) Conform to any promises or affirmations of fact made on the container or label.

(c) Other implied warranties may arise from course of dealing or usage of trade.

WV Legislature

§46B-2-5. Implied warranty of fitness for particular purpose.

If the dealer, at the time the rental contract is made, has reason to know of any particular purpose for which the consumer goods are required and that the consumer is relying on the dealer's skill or judgment to select or furnish suitable consumer goods, there is in the rental contract an implied warranty that the consumer goods will be fit for that purpose.

WV Legislature

§46B-2-6. Manufacturers' warranties; transfer of warranties.

When consumer goods that are subjects of a rent-to-own transaction are warranted by a manufacturer's or supplier's warranty or other warranty that may either be retained by the dealer or transferred to the consumer, the warranty shall be retained by the dealer so long as the dealer is responsible for maintaining the consumer goods. At such time as maintenance of the goods becomes the responsibility of the consumer through a transfer of ownership or otherwise, such warranty shall be transferred to the consumer. The dealer shall advise, orally and in writing, the consumer of any manufacturer's or supplier's warranty that may apply to the consumer goods and any details regarding the warranty and the transfer of the warranty.

WV Legislature

§46B-2-7. Disclaimer of warranties and remedies prohibited.

(a) Notwithstanding any other provision of law to the contrary with respect to consumer goods which are the subject of or are intended to become the subject of a rental contract subject to the provisions of this chapter, all warranties available to the consumer, express or implied, are cumulative and not exclusive, and the consumer shall have the benefit of any or all such warranties. No dealer, manufacturer, supplier or other merchant shall:

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

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

(b) Any exclusion, modification or attempted limitation of a warranty, express or implied, shall be void. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed as inconsistent with each other.

(c) It is unlawful in a rental contract subject to the provisions of this chapter to attempt to exclude, modify or otherwise attempt to limit any implied warranty of merchantability or any part of it, or to attempt to exclude, modify or otherwise attempt to limit any implied warranty of fitness.

WV Legislature

§46B-2-8. Third-party beneficiaries of express and implied warranties.

A warranty to or for the benefit of a consumer under this chapter, whether express or implied, extends to any natural person who is in the family or household of the consumer or who is a guest in the consumer's home if it is reasonable to expect that such person may use or be affected by the consumer goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a consumer to other persons. The operation of this section may not be excluded, modified or limited.

WV Legislature

§46B-2-9. Risk of loss.

Risk of loss is retained by the dealer and does not pass to the consumer until such time as the consumer receives the goods.

WV Legislature