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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

HOUSE BILL No. 4562

(By  Delegate Gannon)



Passed March 12, 1988

In Effect July 1, 1988 Passage

ENROLLED
H. B. 4562

(By DELEGATE YANNI)

[Passed March 12, 1988; in effect July 1, 1988.]

AN ACT to amend and reenact section one hundred two, article six, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter by adding thereto a new article, designated article six-b, all relating to consumer protection; automotive crash parts; unfair methods of competition and unfair or deceptive acts or practices; notices and written statements to be provided to motor vehicle owner; violation; and penalty.

Be it enacted by the Legislature of West Virginia:

That section one hundred two, article six, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article six-b, all to read as follows:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-102. Definitions.

1 When used in this article the following words, terms
2 and phrases, and any variations thereof required by the
3 context, shall have the meaning ascribed to them in this
4 article, except where the context indicates a different
5 meaning:

6 (a) "Advertisement" means the publication, dissemi-
7 nation or circulation of any matter, oral or written,

8 including labeling, which tends to induce, directly or
9 indirectly, any person to enter into any obligation, sign
10 any contract, or acquire any title or interest in any goods
11 or services and includes every word device to disguise
12 any form of business solicitation by using such terms as
13 "renewal," "invoice," "bill," "statement" or "reminder,"
14 to create an impression of existing obligation when there
15 is none, or other language to mislead any person in
16 relation to any sought-after commercial transaction.

17 (b) "Consumer" means a natural person to whom a
18 sale is made in a consumer transaction, and a "consumer
19 transaction" means a sale to a natural person or persons
20 for a personal, family, household or agricultural
21 purpose.

22 (c) "Merchantable" means, in addition to the qualities
23 prescribed in section three hundred fourteen, article
24 two, chapter forty-six of this code, that the goods
25 conform in all material respects to applicable state and
26 federal statutes and regulations establishing standards
27 of quality and safety of goods and, in the case of goods
28 with mechanical, electrical or thermal components, that
29 the goods are in good working order and will operate
30 properly in normal usage for a reasonable period of
31 time.

32 (d) "Sale" includes any sale, offer for sale or attempt
33 to sell any goods for cash or credit or any services or
34 offer for services for cash or credit.

35 (e) "Trade" or "commerce" means the advertising,
36 offering for sale, sale or distribution of any goods or
37 services and shall include any trade or commerce,
38 directly or indirectly, affecting the people of this state.

39 (f) "Unfair methods of competition and unfair or
40 deceptive acts or practices" means and includes, but is
41 not limited to, any one or more of the following:

- 42 (1) Passing off goods or services as those of another;
- 43 (2) Causing likelihood of confusion or of misunder-
44 standing as to the source, sponsorship, approval or
45 certification of goods or services;

- 46 (3) Causing likelihood of confusion or of misunder-
47 standing as to affiliation, connection or association with,
48 or certification by another;
- 49 (4) Using deceptive representations or designations of
50 geographic origin in connection with goods or services;
- 51 (5) Representing that goods or services have sponsor-
52 ship, approval, characteristics, ingredients, uses,
53 benefits or quantities that they do not have, or that a
54 person has a sponsorship, approval, status, affiliation or
55 connection that he does not have;
- 56 (6) Representing that goods are original or new if they
57 are deteriorated, altered, reconditioned, reclaimed, used
58 or secondhand;
- 59 (7) Representing that goods or services are of a
60 particular standard, quality or grade, or that goods are
61 of a particular style or model, if they are of another;
- 62 (8) Disparaging the goods, services or business of
63 another by false or misleading representation of fact;
- 64 (9) Advertising goods or services with intent not to
65 sell them as advertised;
- 66 (10) Advertising goods or services with intent not to
67 supply reasonably expectable public demand, unless the
68 advertisement discloses a limitation of quantity;
- 69 (11) Making false or misleading statements of fact
70 concerning the reasons for, existence of or amounts of
71 price reductions;
- 72 (12) Engaging in any other conduct which similarly
73 creates a likelihood of confusion or of misunderstanding;
- 74 (13) The act, use or employment by any person of any
75 deception, fraud, false pretense, false promise or
76 misrepresentation, or the concealment, suppression or
77 omission of any material fact with intent that others rely
78 upon such concealment, suppression or omission, in
79 connection with the sale or advertisement of any goods
80 or services, whether or not any person has in fact been
81 misled, deceived or damaged thereby;
- 82 (14) Advertising, printing, displaying, publishing,

83 distributing or broadcasting, or causing to be adver-
84 tised, printed, displayed, published, distributed or
85 broadcast in any manner, any statement or representa-
86 tion with regard to the sale of goods or the extension
87 of consumer credit including the rates, terms or
88 conditions for the sale of such goods or the extension of
89 such credit, which is false, misleading, or deceptive, or
90 which omits to state material information which is
91 necessary to make the statements therein not false,
92 misleading or deceptive;

93 (15) Representing that any person has won a prize,
94 one of a group of prizes or any other thing of value, if
95 receipt of the prize or thing of value is contingent upon
96 any payment of a service charge, mailing charge,
97 handling charge or any other similar charge by the
98 person or upon mandatory attendance by the person at
99 a promotion or sales presentation at the seller's place of
100 business or any other location: *Provided*, That a person
101 may be offered one item or the choice of several items
102 conditioned on the person listening to a sales promotion
103 or entering a consumer transaction if the true retail
104 value and an accurate description of the item or items
105 are clearly and conspicuously disclosed along with the
106 person's obligations upon accepting the item or items;
107 such description and disclosure shall be typewritten or
108 printed in at least eight point, regular type, in upper
109 or lower case, where appropriate; or

110 (16) Violating any provision or requirement of article
111 six-b of this chapter.

112 (g) "Warranty" means express and implied warran-
113 ties described and defined in sections three hundred
114 thirteen, three hundred fourteen and three hundred
115 fifteen, article two, chapter forty-six of this code and
116 expressions or actions of a merchant which assure the
117 consumer that the goods have described qualities or will
118 perform in a described manner.

ARTICLE 6B. CONSUMER PROTECTION-AUTOMOTIVE CRASH PARTS.

§46A-6B-1. Legislative declaration.

1 The Legislature hereby finds and declares as a matter

2 of public policy that the purpose of this article is to place
3 upon motor vehicle body shops the duty to disclose to
4 motor vehicle owners information on the use of certain
5 replacement crash parts in repairs to motor vehicles and
6 to make certain notices and statements to the motor
7 vehicle owners so that the owners may choose whether
8 aftermarket crash parts or genuine crash parts shall be
9 used in the repair work.

§46A-6B-2. Definitions.

1 As used in this article, unless the context in which
2 used clearly requires a different meaning:

3 (a) "Aftermarket crash parts" means crash parts:

4 (1) Manufactured by a person other than the original
5 manufacturer of the motor vehicle to be repaired; and

6 (2) For which the original manufacturer of the motor
7 vehicle has not authorized the use of its name or
8 trademark by the manufacturer of the crash parts.

9 (b) "Code" means the code of West Virginia, one
10 thousand nine hundred thirty-one, as amended;

11 (c) "Crash parts" means exterior or interior sheet
12 metal or fiberglass panels and parts which form the
13 superstructure or body of a motor vehicle, including, but
14 not limited to, fenders, bumpers, quarter panels, door
15 panels, hoods, grills, fire walls, permanent roofs, wheel
16 wells and front and rear lamp display panels;

17 (d) "Genuine crash parts" means crash parts:

18 (1) Manufactured by or for the original manufacturer
19 of the motor vehicle to be repaired; and

20 (2) Which are authorized to carry the name or
21 trademark of the original manufacturer of the motor
22 vehicle.

23 (e) "Motor vehicle" has the meaning stated in section
24 one, article one, chapter seventeen-a of this code; and

25 (f) "Motor vehicle body shop" means any person or
26 business establishment that removes, replaces, recondi-
27 tions or repairs sheet metal or fiberglass motor vehicle

28 crash parts.

§46A-6B-3. Notices and written statements to be provided to vehicle owner.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-eight, before beginning repair work on
3 crash parts, a motor vehicle body shop shall:

4 (1) Provide a list to the vehicle owner of the replace-
5 ment crash parts that the body shop intends to use in
6 making repairs;

7 (2) Specify whether the replacement parts are ge-
8 nuine crash parts; and

9 (3) Identify the manufacturer of the parts if the
10 replacement parts are aftermarket crash parts.

11 (b) If the replacement crash parts to be used by the
12 body shop in the repair work are aftermarket crash
13 parts, the body shop shall include with its estimate the
14 following written statement: "THIS ESTIMATE HAS
15 BEEN PREPARED BASED ON THE USE OF AF-
16 TERMARKET CRASH PARTS THAT ARE NOT
17 MANUFACTURED BY THE ORIGINAL MANU-
18 FACTURER OF THE VEHICLE OR BY A MANU-
19 FACTURER AUTHORIZED BY THE ORIGINAL
20 MANUFACTURER TO USE ITS NAME OR TRADE-
21 MARK. THE USE OF AN AFTERMARKET CRASH
22 PART MAY INVALIDATE ANY REMAINING WAR-
23 RANTIES OF THE ORIGINAL MANUFACTURER
24 ON THAT CRASH PART."

25 (c) The notices and statements required under this
26 section shall be made in writing in a clear and
27 conspicuous manner, on a separate piece of paper in ten
28 point capital type.

29 (d) This section may not be construed to replace or
30 alter any provision under article six or any other
31 provision of this chapter.

§46A-6B-4. Other remedies available.

1 This article does not:

2 (a) Prohibit a person from filing an action for

3 damages against a body shop; or

4 (b) Require a person first to exhaust any administra-
5 tive remedy he may have.

**§46A-6B-5. Violation of article an unfair method of
competition or deceptive act or practice;
penalty.**

1 A violation of any provision of this article is an unfair
2 or deceptive act or practice within the meaning of
3 section one hundred two, article six of this chapter and
4 is subject to the enforcement and penalty provisions
5 contained in this chapter.

[Handwritten signatures and scribbles]

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect July 1, 1988.

Judd C. Smith
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Dan Tompkins
President of the Senate

Robert M. Bell
Speaker of the House of Delegates

The within *Approved* this the *29th*
March day of _____, 1988.

Arch A. Moore Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/23/88

Time 3:58 p.m.

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SECRETARY OF STATE