WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

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ENROLLED

HOUSE BILL No. 4562

(By Delegate Yarne)

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Passed March 12, 1988

In Effect July 1, 1988

Passage
ENROLLED
H. B. 4562
(By Delegate Yanni)

[Passed March 12, 1988; is effective 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 and phrases, and any variations thereof required by the context, shall have the meaning ascribed to them in this article, except where the context indicates a different meaning:

6 (a) “Advertisement” means the publication, dissemination or circulation of any matter, oral or written,
including labeling, which tends to induce, directly or indirectly, any person to enter into any obligation, sign any contract, or acquire any title or interest in any goods or services and includes every word device to disguise any form of business solicitation by using such terms as "renewal," "invoice," "bill," "statement" or "reminder," to create an impression of existing obligation when there is none, or other language to mislead any person in relation to any sought-after commercial transaction.

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

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

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

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

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

(1) Passing off goods or services as those of another;

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
(3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by another;

(4) Using deceptive representations or designations of geographic origin in connection with goods or services;

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services or business of another by false or misleading representation of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;

(12) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(13) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(14) Advertising, printing, displaying, publishing,
distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading, or deceptive, or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

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

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

(g) "Warranty" means express and implied warranties described and defined in sections three hundred thirteen, three hundred fourteen and three hundred fifteen, article two, chapter forty-six of this code and expressions or actions of a merchant which assure the consumer that the goods have described qualities or will 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
of public policy that the purpose of this article is to place
upon motor vehicle body shops the duty to disclose to
motor vehicle owners information on the use of certain
replacement crash parts in repairs to motor vehicles and
to make certain notices and statements to the motor
vehicle owners so that the owners may choose whether
aftermarket crash parts or genuine crash parts shall be
used in the repair work.

§46A-6B-2. Definitions.

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

(a) "Aftermarket crash parts" means crash parts:
(1) Manufactured by a person other than the original
manufacturer of the motor vehicle to be repaired; and
(2) For which the original manufacturer of the motor
vehicle has not authorized the use of its name or
trademark by the manufacturer of the crash parts.

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

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

(d) "Genuine crash parts" means crash parts:
(1) Manufactured by or for the original manufacturer
of the motor vehicle to be repaired; and
(2) Which are authorized to carry the name or
trademark of the original manufacturer of the motor
vehicle.

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

(f) "Motor vehicle body shop" means any person or
business establishment that removes, replaces, recondi-
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.

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

(1) Provide a list to the vehicle owner of the replacement crash parts that the body shop intends to use in making repairs;

(2) Specify whether the replacement parts are genuine crash parts; and

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

(b) If the replacement crash parts to be used by the body shop in the repair work are aftermarket crash parts, the body shop shall include with its estimate the following written statement: "THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AFTERMARKET CRASH PARTS THAT ARE NOT MANUFACTURED BY THE ORIGINAL MANUFACTURER OR BY A MANUFACTURER AUTHORIZED BY THE ORIGINAL MANUFACTURER TO USE ITS NAME OR TRADEMARK. THE USE OF AN AFTERMARKET CRASH PART MAY INVALIDATE ANY REMAINING WARRANTIES OF THE ORIGINAL MANUFACTURER ON THAT CRASH PART."

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

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

§46A-6B-4. Other remedies available.

This article does not:

(a) Prohibit a person from filing an action for
damages against a body shop; or
(b) Require a person first to exhaust any administrative remedy he may have.

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

A violation of any provision of this article is an unfair or deceptive act or practice within the meaning of section one hundred two, article six of this chapter and is subject to the enforcement and penalty provisions contained in this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce C. Willin
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.


Jed H. Mills
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Don Trousdale
President of the Senate

Robert C. Cole
Speaker of the House of Delegates

The within ___________________ this the ___________________ day of ___________________, 1988.

Mark A. Brewer, Jr.
Governor