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Chapter No. 312
14/HR12/R808
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HOUSE BILL NO. 96

Originated in House _____ Clerk

HOUSE BILL NO. 96

AN ACT TO CREATE SECTION 75-2-316, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR EXCLUSION OR MODIFICATION TO WARRANTIES; TO AMEND SECTIONS 75-2-314, 75-2-315, 75-2-719 AND 11-7-18, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO REPEAL SECTION 75-2-315.1, MISSISSIPPI CODE OF 1972, WHICH PROVIDES TO LIMITATION OF EXCLUSION OR MODIFICATION OR WARRANTIES TO CONSUMERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following shall be codified as Section 75-2-316, Mississippi Code of 1972:

75-2-316. **Exclusion or Modification to Warranties.**

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to Section 75-2-202, negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) To exclude or modify the implied warranty of merchantability or any part of it in a contract between merchants the language must mention merchantability and in case of a record must be conspicuous. To exclude or modify the implied warranty of

fitness in a contract between merchants, the exclusion must be in a record and be conspicuous and the language is sufficient if it states, for example, that "There are no warranties that extend beyond the description on the face hereof."

(3) Notwithstanding subsection (1) and (2), any oral or written language used by a seller of consumer goods and services, which attempts to exclude or modify any implied warranties of merchantability and fitness for a particular purpose or to exclude or modify the consumer's remedies for breach of those warranties, is unenforceable. However, the seller may recover from the manufacturer any damages resulting from breach of the implied warranty of merchantability or fitness for a particular purpose.

(4) Any oral or written language used by a manufacturer of consumer goods, which attempts to limit or modify a consumer's remedies for breach of the manufacturer's express warranties, is unenforceable.

(5) (a) The provisions of subsections (3) and (4) do not apply to a motor vehicle:

(i) Required to be titled under the state law;

(ii) That is over six (6) model years old or that has been driven more than seventy-five thousand (75,000) miles; and

(iii) If, at the time of the sale of the motor vehicle, the seller gives the purchaser notice of the

inapplicability of this section on the form prescribed by the State Attorney General.

(b) With respect to this subsection (5) only:

(i) An exclusion or modification of an implied warranty of merchantability, or any part of a warranty shall be in writing, mention merchantability, and be conspicuous.

(ii) An exclusion or modification of the implied warranty of fitness shall be in writing and conspicuous.

(iii) Any exclusion or modification of either warranty shall be separately acknowledged by the signature of the buyer.

(6) Notwithstanding subsection (2):

(a) Unless the circumstances indicate otherwise, in contracts between merchants all implied warranties are excluded by expressions like "as is," "with all faults" or other language that in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) For sales between merchants, an implied warranty may also be excluded or modified by course of dealing or course of performance or usage of trade.

(7) Remedies for breach of warranty may be limited in accordance with Sections 75-2-718 and 75-2-719.

SECTION 2. Section 75-2-314, Mississippi Code of 1972, is amended as follows:

75-2-314. (1) Except as otherwise provided in * * * this section or unless excluded or modified (Section 75-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

(c) Are fit for the ordinary purposes for which such goods are used; and

(d) Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) Are adequately contained, packaged and labeled as the agreement may require; and

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

(3) Unless excluded or modified (Section 75-2-316), other implied warranties may arise from course of dealing or usage of trade.

(4) With respect to the sale of cattle, hogs and sheep, there shall be no implied warranty that the cattle, hogs and sheep are free from sickness or disease at the time the sale is consummated, conditioned upon reasonable showing by the seller or his agent that all state and federal regulations pertaining to animal health were complied with.

* * *

SECTION 3. Section 75-2-315, Mississippi Code of 1972, is amended as follows:

75-2-315. Except as otherwise provided in this section, where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified under Section 75-2-316, an implied warranty that the goods shall be fit for such purpose. Provided, however, with respect to the sale of cattle, hogs and sheep, there shall be no implied warranty that the cattle, hogs and sheep are free from sickness or disease at the time the same is consummated, conditioned upon reasonable showing by the seller or his agent that all state and federal regulations pertaining to animal health were complied with.

* * *

SECTION 4. Section 75-2-719, Mississippi Code of 1972, is amended as follows:

75-2-719. (1) Subject to the provisions of subsections (2), (3), and (4) of this section and of Section 75-2-718 on liquidation and limitation of damages,

(a) The agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

(4) Any limitation of remedies which would deprive the buyer of a remedy to which he may be entitled for breach of an implied warranty of merchantability or fitness for a particular purpose in a sale to a consumer, as defined in Section 75-1-201(b)(11), of

consumer goods, as defined in Section 75-9-102(a)(23), shall be prohibited. * * *

SECTION 5. Section 11-7-18, Mississippi Code of 1972, is amended as follows:

11-7-18. Except as otherwise provided in Sections 75-2-314, 75-2-315 * * * and 75-2-719, there shall be no limitation of remedies or disclaimer of liability as to any implied warranty of merchantability or fitness for a particular purpose in a sale to a consumer, as defined in Section 75-1-201(b)(11), of consumer goods, as defined in Section 75-9-102(a)(23). The provisions of this section may not be waived or varied by agreement.

SECTION 6. Section 75-2-315.1, Mississippi Code of 1972, which provides for the limitation of exclusion or modification of warranties to consumers, is repealed.

SECTION 7. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 6, 2014

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
February 28, 2014

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

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