

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2460

By: Cox

AS INTRODUCED

An Act relating to warranties; amending 12A O.S.

1991, Sections 2-316 and 2A-214, which relate to warranties respecting sales and leases of goods; requiring exclusion or modification of certain warranties to be made in manner corresponding to manner in which warranty was created; requiring exclusions or modifications to be printed in same size as material creating applicable warranty; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12A O.S. 1991, Section 2-316, is amended to read as follows:

Section 2-316. Exclusion or Modification of 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 the provisions of this Article on parol or extrinsic evidence (Section 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must

mention merchantability and in case of a writing must be conspicuous and shall be printed in the same size as the language creating the warranty if such warranty was made in writing, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous and shall be printed in the same size as the language creating the warranty if such warranty was made in writing. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2) :

- (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and
- (b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and
- (c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and
- (d) the implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young, provided that seller offers sufficient evidence that all state and federal regulations pertaining to the health of such animals were complied with; provided, however, that the implied warranties

of merchantability and fitness shall apply to the sale or barter of horses.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2-718 and 2-719).

SECTION 2. AMENDATORY 12A O.S. 1991, Section 2A-214, is amended to read as follows:

Section 2A-214.

EXCLUSION OR MODIFICATION OF WARRANTIES

(1) 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 wherever reasonable as consistent with each other; but, subject to the provisions of Section ~~11~~ 2A-202 of this ~~act~~ title on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, ~~and~~ be conspicuous and shall be printed in the same size as the language creating the warranty if the warranty was created in writing.

Subject to subsection (3) of this section, to exclude or modify any implied warranty of fitness the exclusion must be by a writing ~~and~~, be conspicuous and shall be printed in the same size as the language creating the warranty if the warranty was created in writing.

Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous, printed in the same size as the language creating the warranty if the warranty was created in writing, and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section:

- (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing as required by this section and conspicuous;
- (b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and
- (c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (Section ~~20~~ 2A-211 of this ~~act~~ title) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

SECTION 3. This act shall become effective September 1, 1994.

44-2-7620

MAH