

**§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 to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. 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.

(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).

(5). The provisions of subsections (2), (3) and (4) do not apply to sales of consumer goods or services. Any language, oral or written, used by a seller or manufacturer of consumer goods and services that 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. A seller or manufacturer of a motor vehicle may indicate that, to the extent permitted by law, the seller or manufacturer is excluding or modifying implied warranties. Any language, oral or written, used by a prior seller or manufacturer of consumer goods and services that attempts to exclude or modify the warranty or reimbursement remedy of a retail seller of consumer goods and services who provides reimbursement or return to a consumer as required to honor an implied warranty of merchantability due to a defect for which that prior seller or manufacturer is liable under section 2-314 or 2-315 is unenforceable. Consumer goods and services are those new or used goods and services, including mobile homes, that are used or bought primarily for personal, family or household purposes.

(a). A violation of section 2-314, 2-315 or 2-316 arising from the retail sale of consumer goods and services constitutes a violation of Title 5, chapter 10, Unfair Trade Practices Act. [PL 1997, c. 497, §1 (AMD).]

(b). A violation of section 2-316 arising from an attempt by a prior seller or manufacturer of consumer goods and services to exclude or modify the warranty or reimbursement remedy of a retail seller of consumer goods and services who provides reimbursement or return to a consumer as required to honor an implied warranty of merchantability due to a defect for which that prior seller or manufacturer is liable under section 2-314 or 2-315 does not constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act. [PL 1997, c. 497, §1 (NEW).]

[PL 2011, c. 523, §1 (AMD).]

## SECTION HISTORY

PL 1973, c. 444 (AMD). PL 1975, c. 320 (AMD). PL 1997, c. 497, §1 (AMD). PL 2011, c. 523, §1 (AMD).

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