

HOUSE BILL NO. 234

INTRODUCED BY S. FITZPATRICK

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING SALES OF GRAIN, HAY, CORN, STRAW, OR SILAGE FROM THE WARRANTY OF MERCHANTABILITY; AND AMENDING SECTION 30-2-316, MCA."

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

**Section 1.** Section 30-2-316, MCA, is amended to read:

**"30-2-316. 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 chapter on parol or extrinsic evidence (30-2-202) 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;

(b) when the buyer before entering into the 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 which an examination ought in the circumstances to have revealed to the buyer;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade;

(d) in sales of cattle, hogs, sheep, or horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease; ~~and~~

(e) in sales of any seed for planting (including both botanical and vegetative types of seed, whether

1 certified or not), there are no implied warranties, as defined in this chapter, that the seeds are free from disease,  
2 virus, or any kind of pathogenic organisms; and

3 (f) in sales of grain, hay, corn, straw, or silage, there are no implied warranties, as defined in this chapter,  
4 that the grain, hay, corn, straw, or silage is free from disease, virus, or any kind of pathogenic organisms.

5 (4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on  
6 liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719)."

7 - END -