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HOUSE BILL NO. 699

Offered January 13, 2010
Prefiled January 12, 2010

A BILL to amend and reenact § 8.2-719 of the Code of Virginia, relating to the Uniform Commercial Code; sales; limitations on damages.

Patrons—Bulova, Kory, Plum, Scott, J.M. and Surovell; Senators: Petersen, Ticer and Whipple

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 8.2-719 of the Code of Virginia is amended and reenacted as follows:

§ 8.2-719. Contractual modification or limitation of remedy.

(1) Subject to the provisions of subsections (2) ~~and~~, (3), *and (4)* of this section and of ~~the preceding section~~ ~~[§ 8.2-718]~~ *§ 8.2-718* on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this title and may limit or alter the measure of damages recoverable under this title, 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 act.

(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) An agreement may not provide for a limitation or exclusion of consequential damages that limits or excludes the buyer's ability to recover the costs of repair or the completion of work, if the repair or completion of work is necessitated by defective materials or workmanship.