

1982 WL 189231 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 1, 1982

***1 Re: Opinion Request**

Mr. John Foley
Research Assistant
P. O. Box 142
Columbia, SC 29202

Dear Mr. Foley:

You have asked for an opinion concerning Senate Bill No. 715, which will amend [Section 36-2-316, CODE](#), by adding subsection 3(d) which provides that, with respect to cattle, hogs, and sheep, there shall be no implied warranty that such animals are free from disease. Specifically, you have asked what restrictions will remain upon livestock dealers if the subject bill is enacted into law.

It should be instructive to review how warranties are provided by law before discussing the potential effect of this bill. First, express warranties are a matter of contract between the buyer and seller, usually in writing, which act as a limited guarantee that the product will be merchantable. Express warranties have long been a part of contract law and have given very little problem over the years.

Implied warranties are another matter altogether. Prior to the enactment of the Uniform Commercial Code, buyers had very little recourse when the products purchased were not covered by express warranties. [Section 36-2-315, CODE](#), part of the U.C.C., was enacted in this state to provide for implied warranties of fitness for a particular purpose where the seller has reason to know that the buyer is intending to use the product for that purpose.

For example, in your situation a livestock dealer who sells a pedigreed bull would have reason to know that the buyer would use the bull for breeding purposes. If some disease contracted before the sale renders the bull impotent or sterile, the seller would be obligated to the buyer for the purchase price. Your bill would remove this protection.

Livestock dealers are subject to criminal penalties for knowingly selling infected or exposed animals or for allowing such animals to mingle with healthy livestock under [Sections 47-11-130, 47-11-170, and 47-13-60, CODE](#). This, however, affords the unlucky buyer little economic satisfaction. The Code does provide civil liability for those who knowingly sell livestock infected with Brucellosis (47-13-600) or tuberculosis (47-13-850) and for those who knowingly import infected animals into the state (47-9-540). The Code would also provide civil liability under the Unfair Trade Practices Act, Section 39-5-10, *et. seq.*, but this remedy comes saddled with the heavy burden of proof of knowledge, intent, etc. As you may imagine, these remedies are of little practical value compared to an implied warranty of merchantability.

I trust this has answered your question sufficiently. If not, please feel free to call. I would close by reminding you that a livestock dealer could exclude his stock from implied warranties by the use of an acceptable written disclaimer pursuant to the provisions of [Section 36-2-316, CODE](#). It would be well to consider this before enacting a change in the law.

Sincerely

Clifford O. Koon, Jr.

***2 Assistant Attorney General**

ATTACHMENT

A BILL

To Amend [Section 36-2-316](#). Code of Laws of South Carolina, 1976, Relating to Exclusion or Modification of Warranties, so as to Provide that, With Respect to Cattle, Hogs, and Sheep, There Shall be No Implied Warranty that Such Animals Are Free from Disease.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Subsection (3) of [Section 36-2-316 of the 1976 Code](#) is amended by adding at the end:

‘(d) 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 disease.’

SECTION 2. This act shall take effect upon approval by the Governor.

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