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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/13

SPONSOR Lundstrom LAST UPDATED \_\_\_\_\_ HB 317

SHORT TITLE Used Car Express Warranty SB \_\_\_\_\_

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	Minimal*	Minima*	Minimal*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal Implications.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of Courts (AOC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 317 (HB 317) enacts a new section within the Motor Vehicle Quality Assurance Act, Section 57-16A-1 through 9, NMSA 1978, which requires a used motor vehicle dealer selling or leasing a used motor vehicle provide the buyer or lessee with an express written warranty. The warranty must be explained in the buyer's or lessee's preferred language, and an itemized statement of the warranty coverage must be displayed on each used motor vehicle offered for sale or lease. If a dealer fails to give a buyer a written warranty, the dealer shall be deemed to have provided the warranty as a matter of law.

The required warranty must cover at least the following components:

- engine, including all internally lubricated parts;
- transmission and transaxle;
- front- and rear-wheel drive components;
- engine cooling system;
- alternator, generator, starter and ignition system, except for the battery;
- braking system;
- front and rear suspension systems;

- steering system and components;
- seatbelts;
- inflatable restraint systems installed on the vehicle as originally manufactured;
- catalytic converter;
- heater;
- seals and gaskets on components previously itemized; and
- electrical, electronic and computer components, to the extent that those components substantially affect the functionality of other components itemized.

The warranty must provide that if the buyer or lessee notifies the dealer that the used motor vehicle does not conform to the written warranty, the dealer shall notify the buyer or lessee no later than 5 p.m. on the next business day that the dealer will either repair the used motor vehicle to conform with the written warranty, reimburse the buyer or lessee for the cost of repairs or cancel the sale or lease contract and provide the buyer or lessee with a full refund, less a reasonable amount for any damage sustained after sale or lease and not caused by nonconformity with the written warranty. If the dealer makes two unsuccessful attempts to repair the vehicle, the dealer is required to cancel the sale or lease. HB 317 also sets out procedures to be followed in the event the sale or lease is cancelled.

HB 317 requires the warranty have a minimum duration of at least 30 days from the date of delivery or when the odometer has registered 1,000 miles from the odometer reading shown on the sales or lease contract, whichever is earlier.

HB 317 requires the dealer to make a repair or refund after the expiration of the warranty period if the buyer or lessee notified the dealer of the failure of a covered system or part within 15 days of that expiration.

The requirements contained in HB 317 do not apply to any defect or nonconformity caused by the unreasonable use of the vehicle following sale or lease. The dealer shall have the burden of proof in any proceeding in which the dealer argues exclusion of coverage based on unreasonable use or claims a refund deduction based on damage caused by something other than nonconformity with the warranty.

Any violation of any provision of HB 317 constitutes an unfair or deceptive trade practice under the Unfair Trade Practices Act, Sections 57-1-1 through 26, NMSA 1978 (the UPA).

HB 317 contains a severability provision, and applies to sales of used motor vehicles entered into on or after July 1, 2013.

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and actions brought pursuant to the UPA as well as appeals to any damage awards or civil fines imposed pursuant to that Act. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase

## **SIGNIFICANT ISSUES**

HB 317 declares that any violation of its provisions is a violation of the UPA. As the AOC points out, the UPA permits a private party to file a civil action to recover actual damages or the sum of \$100, whichever is greater. That relief is in addition to remedies otherwise available under the common law or other statutes. The UPA also authorizes the AG to bring an action in the name of the state alleging violations of the UPA when the AG has a reasonable belief that a person is using, has used or is about to use any method, act or practice declared unlawful, in this instance, by HB 317. In an UPA action brought by the AG, if the court finds a person is willfully using or has willfully used an unlawful method, act or practice, the AG may recover on behalf of the state a civil penalty of up to \$5,000 per violation.

## **TECHNICAL ISSUES**

Page 8, line 9: the phrase “or leases” should be inserted between “sales” and “of”.

## **OTHER SUBSTANTIVE ISSUES**

The express warranty required by HB 317 whenever a used motor vehicle is sold or leased by a dealer appears to be in addition to the statutory implied warranty of merchantability provision in existing law that these dealers must recognize for 15 days or 500 miles. See Section 57-16A-3.1.

## **AMENDMENTS**

The AGO proposes these amendments:

The Legislature should consider requiring used motor vehicle dealers provide written receipts to buyers upon completion of each attempted repair of the vehicle under the express written warranty that (1) describes the defect complained of; (2) describes the work performed in an attempt to correct the defect or nonconformity; (3) identifies the person or facility who performed the repairs if not performed by the dealer; and (4) itemizes the parts replaced during the repair.

HB 317 should define an additional warranty period for the specific repairs performed under the express written warranty statute. It appears that the costs of diagnostic testing are covered by the express written warranty pursuant to section C (3).

HB 317 should provide for additional compensation to buyers if a trade-in was used as part of the sales negotiation. Trade-in vehicles frequently are included in the negotiation of the purchase of a car. More often than not, buyers agree to sell the trade-in at a wholesale price which is less than the fair market price of the vehicle. If buyers can only recover the “money” paid on the contract, buyers lose the value of the trade-in. Buyers are also left without transportation and do not have the benefit of the trade-in to use to negotiate the sale of the next vehicle.

HB 317 should provide a limited time period in which motor vehicle dealers must complete the warranty repairs. The new car warranty statute gives the manufacturer, agent or dealer four opportunities to repair the motor vehicle within

one year. Repairs must be completed within a cumulative period of thirty days or less. Under HB 317, the used car express written warranty includes a limit of two repair attempts; however, there is no restriction upon how long dealers have to perform the repairs. HB 317 should include a requirement that dealers complete warranty repairs within sixty days after the sale and the cumulative time for repairs should not exceed eleven days. If the repairs cannot be completed within those time limits, the buyer should have the right to cancel the contract and receive a full refund.

In the event of a cancellation of a sale or lease contract under HB 317, a dealer may deduct a “reasonable amount for any damage” from the amount to be refunded. That phrase is not defined. It should be limited to actual damages caused by independent events while the vehicle is in the possession of the buyer, and should not include costs for miles driven or costs related to normal wear and tear.

MD/blm