

1 SENATE BILL 311

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

4 John Pinto

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8 FOR THE INDIAN AFFAIRS COMMITTEE

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10 AN ACT

11 RELATING TO USED MOTOR VEHICLES; AMENDING THE MOTOR VEHICLE
12 QUALITY ASSURANCE ACT; EXTENDING THE IMPLIED WARRANTY PERIOD;
13 PROVIDING FOR AN EXPRESS WARRANTY FOR USED MOTOR VEHICLES;
14 PROVIDING REMEDIES.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 57-16A-1 NMSA 1978 (being Laws 1985,
18 Chapter 220, Section 1) is amended to read:

19 "57-16A-1. SHORT TITLE.--~~[This act]~~ Chapter 57, Article
20 16A NMSA 1978 may be cited as the "Motor Vehicle Quality
21 Assurance Act".

22 SECTION 2. Section 57-16A-3.1 NMSA 1978 (being Laws 2003,
23 Chapter 216, Section 3) is amended to read:

24 "57-16A-3.1. USED MOTOR VEHICLES.--

25 A. Unless a seller is a used motor vehicle dealer,

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1 before the seller attempts to sell a used motor vehicle, the
2 seller shall possess the title to the used motor vehicle and
3 the title shall be in the seller's name.

4 B. Except as otherwise provided in the Motor
5 Vehicle Quality Assurance Act, a used motor vehicle dealer
6 shall not exclude, modify or disclaim the implied warranty of
7 merchantability prescribed in Section 55-2-314 NMSA 1978 or
8 limit the remedies for a breach of the warranty before midnight
9 of the [~~fifteenth~~] thirtieth calendar day after delivery of a
10 used motor vehicle or until a used motor vehicle is driven
11 [~~five hundred~~] one thousand miles after delivery, whichever is
12 earlier. In calculating time under this subsection, a day on
13 which the warranty is breached and all subsequent days in which
14 the used motor vehicle fails to conform with the implied
15 warranty of merchantability are excluded. In calculating
16 distance under this subsection, the miles driven to obtain or
17 in connection with the repair, servicing or testing of the used
18 motor vehicle that fails to conform with the implied warranty
19 of merchantability are excluded. An attempt to exclude, modify
20 or disclaim the implied warranty of merchantability or to limit
21 the remedies for a breach of the warranty in violation of this
22 subsection renders a purchase agreement voidable at the option
23 of the purchaser.

24 C. An implied warranty of merchantability is met if
25 a used motor vehicle functions substantially free of a defect

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1 that significantly limits the use of the used motor vehicle for
2 the ordinary purpose of transportation on any public highway.
3 The implied warranty of merchantability expires at midnight of
4 the [~~fifteenth~~] thirtieth calendar day after delivery of a used
5 motor vehicle or until a used motor vehicle is driven [~~five~~
6 ~~hundred~~] one thousand miles after delivery, whichever is
7 earlier. In calculating time, a day on which the implied
8 warranty of merchantability is breached is excluded and all
9 subsequent days in which the used motor vehicle fails to
10 conform with the warranty are also excluded. In calculating
11 distance, the miles driven to obtain or in connection with the
12 repair, servicing or testing of the used motor vehicle that
13 fails to conform with the implied warranty of merchantability
14 are excluded.

15 D. No used motor vehicle dealer shall sell a used
16 motor vehicle to a consumer without giving the buyer or lessee
17 an express written warranty that shall have a minimum duration
18 of at least thirty days from the date of delivery of a used
19 motor vehicle or when the odometer has registered one thousand
20 miles from the odometer reading shown on the sales or lease
21 contract, whichever is earlier. In calculating time pursuant
22 to this subsection, a day on which the express written warranty
23 is breached and all subsequent days in which the used motor
24 vehicle fails to conform with the express written warranty are
25 excluded. In calculating distance pursuant to this subsection,

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1 the miles driven to obtain or in connection with the repair,
2 servicing or testing of the used motor vehicle that fails to
3 conform with the express written warranty are excluded. A used
4 motor vehicle dealer shall display on each used motor vehicle
5 offered for sale a written statement that itemizes each of the
6 systems and components set forth in this subsection and shall
7 specify that the dealer will either repair the used motor
8 vehicle to conform with the written warranty or cancel the sale
9 or lease contract and provide the buyer or lessee with a full
10 refund, less a reasonable amount for any damage sustained by
11 the used motor vehicle after the sale or lease, excepting
12 damage caused by any nonconformity with the written warranty.
13 The written warranty required in this subsection shall cover at
14 least the following components:

- 15 (1) engine, including all internally
16 lubricated parts;
17 (2) transmission and transaxle;
18 (3) front- and rear-wheel drive components;
19 (4) engine cooling system;
20 (5) alternator, generator, starter and
21 ignition system, except for the battery;
22 (6) braking system;
23 (7) front and rear suspension systems;
24 (8) steering system and components;
25 (9) seatbelts;

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1 (10) inflatable restraint systems installed on
2 the used motor vehicle as originally manufactured;

3 (11) catalytic converter;

4 (12) heater;

5 (13) seals and gaskets on components itemized
6 in this subsection; and

7 (14) electrical, electronic and computer
8 components, to the extent that those components substantially
9 affect the functionality of other components itemized in this
10 subsection.

11 ~~[D-]~~ E. An implied warranty of merchantability
12 ~~[does]~~ and the express warranty provided for in Subsection C of
13 this section do not extend to damage that occurs after the sale
14 of the used motor vehicle that results from:

- 15 (1) off-road use;
- 16 (2) racing;
- 17 (3) towing;
- 18 (4) abuse;
- 19 (5) misuse;
- 20 (6) neglect;
- 21 (7) failure to perform regular maintenance;

22 and

- 23 (8) failure to maintain adequate oil, coolant
- 24 and other required fluids or lubricants.

25 ~~[E-]~~ F. If the implied warranty of merchantability

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1 or the express warranty described in this section is breached,
2 the consumer shall give reasonable notice to the seller within
3 thirty days of the date of the breach. Before the consumer
4 exercises another remedy pursuant to Chapter 55, Article 2 NMSA
5 1978, the seller shall have a reasonable opportunity to repair
6 the used motor vehicle. The consumer shall pay one-half of the
7 cost of the first two repairs necessary to bring the used motor
8 vehicle into compliance with the warranty. The payments by the
9 consumer are limited to a maximum payment of twenty-five
10 dollars (\$25.00) for each repair.

11 ~~[F-]~~ G. The maximum liability of a seller pursuant
12 to this section is limited to the purchase price paid for the
13 used motor vehicle, to be refunded to the consumer or lender,
14 as applicable, in exchange for return of the vehicle, unless
15 the seller knew or should have known of the defect given the
16 circumstances in which the vehicle was acquired or sold and the
17 seller did not disclose that defect.

18 ~~[G-]~~ H. An agreement for the sale of a used motor
19 vehicle by a used motor vehicle dealer is voidable at the
20 option of the consumer unless it includes the express warranty
21 set forth in Subsection D of this section and it contains on
22 its face the following conspicuous statement printed in
23 boldface ten-point or larger type set off from the body of the
24 agreement:

25 "New Mexico law requires that this vehicle will be

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1 fit for the ordinary purposes for which the vehicle
2 is used for [~~fifteen~~] thirty days or [~~five hundred~~]
3 one thousand miles after delivery, whichever is
4 earlier, except with regard to particular defects
5 disclosed on the first page of this agreement. You
6 (the consumer) will have to pay up to twenty-five
7 dollars (\$25.00) for each of the first two repairs
8 if the warranty is violated.".

9 [~~H.~~] I. The inclusion in the agreement of the
10 implied warranty statement prescribed in Subsection [~~G~~] H of
11 this section does not create an express warranty.

12 [~~F.~~] J. A consumer of a used motor vehicle may
13 waive the implied warranty of merchantability only for a
14 particular defect in the vehicle and only if all of the
15 following conditions are satisfied:

16 (1) the used motor vehicle dealer fully and
17 accurately discloses to the consumer that because of
18 circumstances unusual to the business of the used motor vehicle
19 dealer, the used motor vehicle has a particular defect;

20 (2) the consumer agrees to buy the used motor
21 vehicle after disclosure of the defect; and

22 (3) before the sale, the consumer indicates
23 agreement to the waiver by signing and dating the following
24 conspicuous statement that is printed on the first page of the
25 sales agreement in boldface ten-point or larger type and that

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1 is written in the language in which the presentation was made:

2 "Attention consumer: sign here only if the dealer
3 has told you that this vehicle has the following
4 problem(s) and you agree to buy the vehicle on those
5 terms:

- 6 1. _____
- 7 2. _____
- 8 3. _____."

9 ~~[J-]~~ K. A used motor vehicle dealer has the burden
10 to prove by a preponderance of the evidence that the dealer
11 complied with Subsection ~~[F]~~ J of this section.

12 L. In any proceeding in which the exclusion of
13 coverage permitted by Subsection E of this section is an issue,
14 the dealer shall have the burden of proof.

15 M. Any agreement between a used motor vehicle
16 dealer and a buyer that disclaims, limits or waives the rights
17 set forth in this section shall, at the option of the buyer, be
18 void as contrary to public policy.

19 N. If a used motor vehicle dealer fails to give a
20 buyer a written warranty pursuant to this section, the used
21 motor vehicle dealer shall be deemed to have provided the
22 warranty as a matter of law.

23 O. A violation of the provisions of this section
24 constitutes an unfair or deceptive trade practice pursuant to
25 the Unfair Practices Act.

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~~[K-]~~ P. A consumer or seller that is aggrieved by a transaction pursuant to this section and that seeks a legal remedy shall pursue an appropriate remedy prescribed in Chapter 55, Article 2 NMSA 1978 and shall comply with the requirements prescribed in that article."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014.