

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/14

SPONSOR Pinto **LAST UPDATED** _____ **HB** _____

SHORT TITLE Motor Vehicle Implied & Express Warranties **SB** 311

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		None Noted	None Noted			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 311 makes changes to what is popularly known as the lemon laws applicable to vehicles.

All goods in commerce, including motor vehicles, are sold with an implied warranty of merchantability, or promise that the vehicles will be reasonably suitable for their purpose. Section 57-16A-1 NMSA 1978 allows sellers of vehicles to limit that warranty to 15 day or 500 miles; SB 311 amends the statute to extend the warranty to no less than 30 days or 1000 miles, whichever occurs first.

SB 311 also creates a new requirement that each motor vehicle seller must display an express, or written, warranty with the vehicle. This warranty must include the limitations of 30 days or 1000 miles, the limitations do not include days that the vehicle is not working properly, and do not include miles used to get the vehicle serviced. The warranty is to include an itemized list of vehicle systems the warranty covers, including the cooling system, the braking system, and many others.

The bill further limits the express warranty by not covering damage related to extraordinary use such as racing or neglect. The bill also incorporates the express warranty into existing notice provisions applicable to the seller upon sale and the buyer upon breach of warranty. New material includes a provision that requires the seller to prove misuse, prohibits waiver of the warranty, establishes that if the seller does not provide the written warranty the law will presume the seller did so anyway, and makes the violation of the provisions of the law an unfair or deceptive trade practice.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

The AOC states that under current law the implied warranty of merchantability means a vehicle is supposed to be reasonably suited for its intended purpose. Buyers, sellers and judges can interpret the warranty in countless different ways. For instance, if the windshield wipers stop working immediately after sale, some would say that makes the vehicle unfit to use while others would say that the lack of wipers does not make the vehicle unfit for travel. SB 311, by making the implied warranty an express one, helps define the warranty substantially. The bill would clarify what the warranty covers on vehicles, helps define how the warranty can be “voided” by the buyer, and helps define what does and does not extend the still relatively short duration of the warranty.

In this way SB 311 would be helpful to the Judiciary. It takes some, though not all, of the guesswork out of interpreting used vehicle warranties.

TECHNICAL ISSUES

The AGO recommends the consideration of the following amendments, stating the bill should:

- Require used motor vehicle dealers to 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.
- Clarify whether costs associated with diagnostic testing are covered by the express written warranty would be helpful.
- Clarify whether the costs associated with towing the vehicle to the repair shop are covered by the express written warranty would be helpful.
- Provide compensation to buyers if a trade-in was used as part of the sales negotiation if the dealer voids the contract under the express warranty provision. Often times trade-in vehicles are included in the negotiation of the purchase of a motor vehicle. 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. 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. If buyers can only recover the “money” paid on the contract, buyers lose the value of the trade-in; therefore, buyers should recover the market price for the trade-in if the dealer is unable to return the trade-in vehicle to the buyer.

- Provide a limited time period for which motor vehicle dealers have to complete the warranty repairs. Under the new car warranty statute, the manufacturer, agent or dealer is given four opportunities to repair the motor vehicle within one year. Repairs must be completed within a cumulative period of thirty days or less. The proposed express warranty has no restriction upon how long dealers have to perform the repairs. SB 311 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 consecutive days. If the repairs cannot be completed within sixty days after sale or within eleven consecutive days, the buyer should have the right to void the contract and receive a full refund.
- Provide a specified number of times which motor vehicle dealers have to repair the vehicle. Under the new car warranty statute, the manufacturer, agent or dealer is given four opportunities to repair.
- Define the term “reasonable amount for any damage” to limit those damages to actual damages caused by independent events while the vehicle is in the possession of the buyer and should exclude costs for miles driven or costs related to normal wear and tear.

Finally, the AGO notes the provision provided under Subsection N is redundant and that the provision provided under Subsection O should be amended under the Unfair Practices Act, NMSA 1978, § 57-12-1 et seq.

CB/jl