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HOUSE BILL 189

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Brian G. Baca and Rebecca Dow

AN ACT

RELATING TO VEHICLE QUALITY ASSURANCE; AMENDING THE DEFINITION OF "MOTOR VEHICLE" IN THE MOTOR VEHICLE QUALITY ASSURANCE ACT TO INCLUDE RECREATIONAL VEHICLES AND RECREATIONAL TRAVEL TRAILERS; EXEMPTING TRAILERS FROM THE WAIVER OF THE IMPLIED WARRANTY OF MERCHANTABILITY FOR DAMAGE THAT RESULTS FROM TOWING.

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

SECTION 1. Section 57-16A-2 NMSA 1978 (being Laws 1985, Chapter 220, Section 2, as amended) is amended to read:

"57-16A-2. DEFINITIONS.--As used in the Motor Vehicle Quality Assurance Act:

A. "collateral charges" means additional charges to a consumer not directly attributed to a manufacturer's suggested retail price label for a new motor vehicle and

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1 includes all taxes, license, title and registration fees and
2 other governmental charges related to the purchase of the
3 vehicle;

4 B. "comparable motor vehicle" means an identical or
5 reasonably equivalent motor vehicle;

6 C. "consumer" means the purchaser, other than for
7 purposes of resale, of a new or used motor vehicle normally
8 used for personal, family or household purposes, a person to
9 whom such a motor vehicle has been transferred during the
10 duration of an express warranty applicable to the motor vehicle
11 and any other person entitled by the terms of the warranty to
12 enforce the obligations of the warranty;

13 D. "express warranty" means a written affirmation
14 of the fact of promise made by a manufacturer to a consumer in
15 connection with the sale of a new or used motor vehicle that
16 relates to the nature of the material or workmanship or to a
17 specified level of performance over a specified period of time,
18 including any terms or conditions precedent to the enforcement
19 of obligations pursuant to the warranty;

20 E. "manufacturer" means a person engaged in the
21 manufacturing, assembling, importing or distributing of a motor
22 vehicle as a regular business;

23 F. "motor vehicle" means a passenger motor vehicle,
24 ~~[including an]~~ automobile, pickup truck, motorcycle, ~~[or]~~ van,
25 recreational vehicle, motor home, fifth wheel camper,

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1 recreational travel trailer or truck camper normally used for
2 personal, family or household purposes that is sold and
3 registered in this state [~~and whose gross vehicle weight is~~
4 ~~less than ten thousand pounds~~] but does not include a motor
5 vehicle that has a gross vehicle weight of ten thousand pounds
6 or more purchased primarily for business or commercial
7 purposes;

8 G. "used motor vehicle" means a motor vehicle that
9 has been sold, bargained or exchanged or a motor vehicle that
10 is the subject of a title that has been transferred from the
11 person who first acquired the motor vehicle from the
12 manufacturer, importer or dealer or agent of the manufacturer
13 or importer and that has been placed in bona fide consumer use;
14 and

15 H. "used motor vehicle dealer" means a person or
16 business that sells or offers for sale a used motor vehicle
17 after selling or offering for sale four or more used motor
18 vehicles in the previous twelve months but does not include:

- 19 (1) a bank or financial institution;
20 (2) an insurance company;
21 (3) a business selling a used motor vehicle to
22 an employee of the business; or
23 (4) a lessor selling a leased vehicle to the
24 lessee of the vehicle or to an employee of the lessee of the
25 vehicle."

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

3 "57-16A-3.1. USED MOTOR VEHICLES.--

4 A. Unless a seller is a used motor vehicle dealer,
5 before the seller attempts to sell a used motor vehicle, the
6 seller shall possess the title to the used motor vehicle and
7 the title shall be in the seller's name.

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

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1 subsection renders a purchase agreement voidable at the option
2 of the purchaser.

3 C. An implied warranty of merchantability is met if
4 a used motor vehicle functions substantially free of a defect
5 that significantly limits the use of the used motor vehicle for
6 the ordinary purpose of transportation on any public highway.
7 The implied warranty of merchantability expires at midnight of
8 the fifteenth calendar day after delivery of a used motor
9 vehicle or, if applicable, until a used motor vehicle is driven
10 five hundred miles after delivery, whichever is earlier. In
11 calculating time, a day on which the implied warranty of
12 merchantability is breached is excluded and all subsequent days
13 in which the used motor vehicle fails to conform with the
14 warranty are also excluded. In calculating distance, the miles
15 driven to obtain or in connection with the repair, servicing or
16 testing of the used motor vehicle that fails to conform with
17 the implied warranty of merchantability are excluded.

18 D. An implied warranty of merchantability does not
19 extend to damage that occurs after the sale of the used motor
20 vehicle that results from:

- 21 (1) off-road use;
22 (2) racing;
23 (3) towing, unless the damage is to a fifth
24 wheel camper, recreational travel trailer or truck camper;
25 (4) abuse;

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- 1 (5) misuse;
- 2 (6) neglect;
- 3 (7) failure to perform regular maintenance;

4 and

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

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

18 F. The maximum liability of a seller pursuant to
19 this section is limited to the purchase price paid for the used
20 motor vehicle, to be refunded to the consumer or lender, as
21 applicable, in exchange for return of the vehicle, unless the
22 seller knew or should have known of the defect given the
23 circumstances in which the vehicle was acquired or sold and the
24 seller did not disclose that defect.

25 G. An agreement for the sale of a used motor

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1 vehicle by a used motor vehicle dealer is voidable at the
2 option of the consumer unless it contains on its face the
3 following conspicuous statement printed in boldface, ten-point
4 or larger type set off from the body of the agreement:

5 "New Mexico law requires that this vehicle will be
6 fit for the ordinary purposes for which the vehicle
7 is used for fifteen days or five hundred miles after
8 delivery, whichever is earlier, except with regard
9 to particular defects disclosed on the first page of
10 this agreement. You (the consumer) will have to pay
11 up to twenty-five dollars (\$25.00) for each of the
12 first two repairs if the warranty is violated."

13 H. The inclusion in the agreement of the statement
14 prescribed in Subsection G of this section does not create an
15 express warranty.

16 I. A consumer of a used motor vehicle may waive the
17 implied warranty of merchantability only for a particular
18 defect in the vehicle and only if all of the following
19 conditions are satisfied:

20 (1) the used motor vehicle dealer fully and
21 accurately discloses to the consumer that because of
22 circumstances unusual to the business of the used motor vehicle
23 dealer, the used motor vehicle has a particular defect;

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

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(3) before the sale, the consumer indicates agreement to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in boldface ten-point or larger type and that is written in the language in which the presentation was made:

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

- 1. _____
- 2. _____
- 3. _____."

J. A used motor vehicle dealer has the burden to prove by a preponderance of the evidence that the dealer complied with Subsection I of this section.

K. 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."