

AN ACT

RELATING TO MOTOR VEHICLES; REQUIRING NOTIFICATION OF REPLACED OR
REPURCHASED VEHICLES; PROVIDING QUALITY ASSURANCE STANDARDS FOR
USED MOTOR VEHICLES.

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

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

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

D. "express warranty" means a written affirmation of the fact of promise
made by a manufacturer to a consumer in connection with the sale of a new or used
motor vehicle that relates to the nature of the material or workmanship or to a specified

H
F
1
/
H
B

2
2
5
P
a
g
e

1

level of performance over a specified period of time, including any terms or conditions precedent to the enforcement of obligations pursuant to the warranty;

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

F. "motor vehicle" means a passenger motor vehicle, including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes, that is sold and registered in this state and whose gross vehicle weight is less than ten thousand pounds;

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

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

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

Section 2. A new section of the Motor Vehicle Quality Assurance Act is enacted to read:

H
F
1
/
H
B
2
2
5
P
a
g
e
2

"NOTICE OF REPLACEMENT OR REPURCHASE TO USED MOTOR VEHICLE DEALERS AND CONSUMERS.--A manufacturer, its agent, its authorized dealer or a used motor vehicle dealer that has been ordered by judgment or decree to replace or repurchase or that has replaced or repurchased a motor vehicle pursuant to the Motor Vehicle Quality Assurance Act shall, before offering the motor vehicle for resale, attach to the motor vehicle written notification indicating that the motor vehicle has been replaced or repurchased. A consumer or a used motor vehicle dealer may bring a cause of action against a person who removes the notification from the motor vehicle, unless the manufacturer, its agent or its authorized dealer or a used motor vehicle dealer, before completion of the sale, has provided the purchaser with written notification by the manufacturer, dealer or agent of the dealer, that the motor vehicle has been replaced or repurchased."

H
F
1
/
H
B
2
2
5
P
a
g
e
3

Section 3. A new section of the Motor Vehicle Quality Assurance Act is enacted to read:

"USED MOTOR VEHICLES.--

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

B. Except as otherwise provided in the Motor Vehicle Quality Assurance Act, a used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability prescribed in Section 55-2-314 NMSA 1978 or limit the remedies for a breach of the warranty before midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time under this

subsection, a day on which the warranty is breached and all subsequent days in which the used motor vehicle fails to conform with the implied warranty of merchantability are excluded. In calculating distance under this subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the used motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of the warranty in violation of this subsection renders a purchase agreement voidable at the option of the purchaser.

H
F
1
/
H
B
2
2
5
P
a
g
e
4

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

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

- (1) off-road use;
- (2) racing;
- (3) towing;

- (4) abuse;
- (5) misuse;
- (6) neglect;
- (7) failure to perform regular maintenance; and
- (8) failure to maintain adequate oil, coolant and other required

fluids or lubricants.

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

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

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

"New Mexico law requires that this vehicle will be fit for the ordinary

H
F
1
/
H
B

2
2
5
P
a
g
e

5

purposes for which the vehicle is used for fifteen days or five hundred miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the consumer) will have to pay up to twenty-five dollars (\$25.00) for each of the first two repairs if the warranty is violated."

H
F
1
/
H
B

2
2
5
P
a
g
e

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

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

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

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

(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."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2004.

H
F
1
/
H
B

2
2
5
P
a
g
e

7