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HOUSE BILL 225

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Al Park

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 ~~those~~ 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;

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

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

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

18           E. "manufacturer" means [~~any~~] a person engaged in  
19 the manufacturing, assembling, importing or distributing of a  
20 motor vehicle as a regular business; [~~and~~]

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

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

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

12                   (1) a bank or financial institution;

13                   (2) an insurance company;

14                   (3) a business selling a used motor vehicle to  
15 an employee of the business; or

16                   (4) a lessor selling a leased vehicle to the  
17 lessee of the vehicle or to an employee of the lessee of the  
18 vehicle. "

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

21           "[NEW MATERIAL] NOTICE TO DEALERS AND PROSPECTIVE  
22 PURCHASERS. -- A manufacturer, its agent or its authorized dealer  
23 that has been ordered by judgment or decree to replace or  
24 repurchase or that has replaced or repurchased a motor vehicle  
25 pursuant to the Motor Vehicle Quality Assurance Act shall,

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1 before offering the motor vehicle for resale, attach to the  
2 motor vehicle written notification indicating that the motor  
3 vehicle has been replaced or repurchased. A consumer may bring  
4 a cause of action against a person who removes the notification  
5 from the motor vehicle, unless the manufacturer, its agent or  
6 its authorized dealer, before completion of the sale, has  
7 provided the purchaser with written notification by the  
8 manufacturer, dealer or agent of the dealer, that the motor  
9 vehicle has been replaced or repurchased. "

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

12 "[NEW MATERIAL] USED MOTOR VEHICLES. --

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

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

. 141976. 2

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

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

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1 warranty of merchantability are excluded.

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

- 5 (1) off-road use;
- 6 (2) racing;
- 7 (3) towing;
- 8 (4) abuse;
- 9 (5) misuse;
- 10 (6) neglect;
- 11 (7) failure to perform regular maintenance;

12 and

13 (8) failure to maintain adequate oil, coolant  
14 and other required fluids or lubricants.

15 E. If the implied warranty of merchantability  
16 described in this section is breached, the purchaser shall give  
17 reasonable notice to the seller. Before the purchaser  
18 exercises another remedy pursuant to Chapter 55, Article 2 NMSA  
19 1978, the seller shall have a reasonable opportunity to repair  
20 the used motor vehicle. The purchaser shall pay one-half of  
21 the cost of the first two repairs necessary to bring the used  
22 motor vehicle into compliance with the warranty. The payments  
23 by the purchaser are limited to a maximum payment of twenty-  
24 five dollars (\$25.00) for each repair.

25 F. The maximum liability of a seller pursuant to

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1 this section is limited to the purchase price paid for the used  
2 motor vehicle.

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

8 "The seller hereby warrants that this vehicle will  
9 be fit for the ordinary purposes for which the  
10 vehicle is used for fifteen days or five hundred  
11 miles after delivery, whichever is earlier, except  
12 with regard to particular defects disclosed on the  
13 first page of this agreement. You (the purchaser)  
14 will have to pay up to twenty-five dollars (\$25.00)  
15 for each of the first two repairs if the warranty is  
16 violated."

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

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

24 (1) the used motor vehicle dealer fully and  
25 accurately discloses to the purchaser that because of

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1 circumstances unusual to the business of the used motor vehicle  
2 dealer, the used motor vehicle has a particular defect;

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

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

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

- 14 1. \_\_\_\_\_  
15 2. \_\_\_\_\_  
16 3. \_\_\_\_\_."

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

20 K. A purchaser or seller that is aggrieved by a  
21 transaction pursuant to this section and that seeks a legal  
22 remedy shall pursue an appropriate remedy prescribed in Chapter  
23 55, Article 2 NMSA 1978 and shall comply with the requirements  
24 prescribed in the article."