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LEGISLATIVE SUMMARY



Bill S-2: An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL S-2: AN ACT TO AMEND THE MOTOR VEHICLE SAFETY ACT AND TO MAKE A CONSEQUENTIAL AMENDMENT TO ANOTHER ACT

1 BACKGROUND

Bill S-2, An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act (short title: Strengthening Motor Vehicle Safety for Canadians Act), was introduced in the Senate by the Honourable Peter Harder, Leader of the Government in the Senate, and read for the first time on 11 May 2016.¹ **The bill was referred to the Standing Senate Committee on Transport and Communications on 25 October 2016.² On 24 November 2016, the Committee reported the bill back to the Senate with an amendment (new section 10.52).³ The bill passed third reading in the Senate, as amended, on 2 February 2017.⁴**

Bill S-2 amends the *Motor Vehicle Safety Act*⁵ (MVSA) to give the Minister of Transport new vehicle recall powers.⁶ It is similar to Bill C-62, which was introduced during the 2nd Session of the 41st Parliament and died on the *Order Paper* when Parliament was dissolved on 2 August 2016.⁷

The bill enables the Minister to take the following steps:

- order a company to issue a recall (currently, manufacturers decide whether to issue a vehicle recall⁸);
- require manufacturers and importers to fix defective or non-compliant vehicles and equipment at their expense before the vehicles are sold;
- require companies to provide additional motor vehicle safety information;
- require companies operating in Canada to be more aware of foreign defects and issues of non-compliance for vehicles that are similar to those sold in Canada;
- fine manufacturers up to \$200,000 per day, per violation, for any actions that contravene the MVSA; and
- provide Transport Canada inspectors with new powers to collect more information for enforcement and investigation activities.⁹

The importation of motor vehicles and motor vehicle equipment into Canada is governed by the safety standards established by the MVSA,¹⁰ and before vehicles and equipment manufactured in Canada can be shipped to another province for sale, they must have a national safety mark confirming that they have been manufactured according to MVSA safety standards.¹¹

2 DESCRIPTION AND ANALYSIS

The following description highlights specific aspects of the bill; it does not examine every provision.

2.1 MINISTER'S POWERS (CLAUSE 3)

The bill introduces new sections 2.1 and 2.2, which allow the Minister to delegate any of his or her powers and duties under the MVSA and to enter into an agreement with a third party to further the purposes of the MVSA.

2.2 DEFECTS AND NON-COMPLIANCES (CLAUSES 4 TO 6)

The bill introduces new requirements, according to which Canadian vehicle manufacturers and importers must:

- identify a contact person for the purpose of corresponding with the Minister concerning compliance with the MVSA (new section 2.3); and
- compile records, containing information prescribed in regulations, concerning vehicles and equipment and provide them to the Minister at the Minister's request (new sections 5(2) to 5(2.1)).

The bill also compels companies that sell vehicles to meet the requirement that applies to vehicle manufacturers and importers to provide the Minister, on the Minister's request, with the means to retrieve or analyze information created or recorded by a vehicle or equipment (amended section 8). In addition, the bill gives the Minister the power to order companies that manufacture, sell or import vehicles to conduct tests, analyses or studies to obtain information on possible defects or to verify compliance with the Act, and to submit the results of these assessments to the Minister (new section 8.1).

As well, the bill modernizes section 9 by allowing the Minister to exempt certain vehicles from safety standards when this would promote technological development.

2.3 NOTICE OF DEFECT AND OF NON-COMPLIANCE (CLAUSES 7 AND 8)

The bill amends section 10.3 and enacts new sections 10.4 to 10.9 of the MVSA, giving the Minister the following new powers regarding notices of defect and of non-compliance:

- A company must specify the date by which the defect or non-compliance described in a notice to vehicle owners will be corrected, and it can be required to provide the Minister with the information necessary to verify that the date given in the notice is the earliest date by which the defect or non-compliance can be corrected (new section 10.4).
- If the Minister considers it to be in the interest of safety, and following receipt of a notice, the Minister can order a company that manufactures, sells or imports vehicles or equipment to correct a defect or non-compliance in accordance with the terms and conditions stated in the order (new section 10.5). The company that is subject to the Minister's order can correct the defect or non-compliance by repairing or replacing the vehicle or equipment, or reimbursing either the cost of repairs that has been expended or the sale price of the vehicle or equipment (new section 10.51).

- The Minister may, by order, require a company that manufactures, sells or imports vehicles or equipment to reimburse the costs that have already been paid to correct the defect or non-compliance of vehicles or components manufactured up to 14 years before the order (new section 10.6).
- The Minister may also, by order, require a company to ensure that any defect or non-compliance in a vehicle or piece of equipment is corrected before it is first offered for sale to a retail purchaser (new section 10.61).
- **If, when an order is made under new section 10.5 or new section 10.61, a dealer still owns a vehicle or equipment that it purchased from a company that is the subject of the order, the company must either provide the parts to correct the defect or repurchase the vehicle or equipment from the dealer. Where the company repurchases the vehicle or equipment, it must also pay transportation costs and compensate the dealer with an amount equivalent to at least 1% per month of the price paid by the dealer, prorated from the date on which the order was made to the date of purchase. This new section was added as an amendment by the Standing Senate Committee on Transport and Communications to address concerns that dealers could suffer financial hardship (new section 10.52).**

The Minister's decision to order a company to take corrective action regarding a defect or non-compliance must be based on testing, analysis, inspection, examination, or research, and the Minister must first have consulted the company concerned. Before making a final decision, the Minister must also allow the company and any interested parties to express their views on the corrective measures to be specified in the order (new section 10.7).

2.4 REGULATIONS (CLAUSES 10 AND 11)

The bill amends section 13(1) so that the Minister's decision, following a decision by a foreign court, to suspend regulations made under the MVSA may be effective for three years rather than one.

It also adds new section 13.1, which allows the Minister to suspend, modify or adapt regulations for up to three years in order to promote innovation or for reasons of safety.

2.5 INSPECTIONS (CLAUSES 12 TO 14)

The bill strengthens the powers of Transport Canada investigators. In addition to verifying vehicle compliance, inspectors are able to collect information on collisions (new section 14(1.1) and amended section 15).

The bill also stipulates that inspectors are able to move about freely on any collision site, other than a dwelling-house, for the purpose of verification or investigation, and to require the attendance of persons they consider relevant (new sections 15(2) and 15(3)). They are also able to disassemble a vehicle or equipment found on the site of a verification or investigation (new section 15(4)) and seize equipment and components that may have been used or resulted in a contravention of the MVSA (new section 15(6)).

Persons must answer any reasonable questions posed by an inspector and provide any documents or electronic data requested as part of a verification or investigation (new section 15(5)). An inspector may also order a person, in writing, to provide any document, information or electronic data required in order to verify compliance with the MVSA (new section 15.1). The bill also prohibits anyone from obstructing or hindering an inspector or from giving an inspector a false or misleading statement (new section 16).

2.6 CONSENT AGREEMENT (CLAUSE 14)

The bill introduces section 16.01, which allows the Minister to enter into an agreement with a company or an individual who has contravened the legislation, for the purposes of a payment by the company or individual of an amount of money that replaces a fine or an administrative monetary penalty. Once the agreement is filed with the Federal Court, it is deemed to be an order of the court and no further proceedings may be taken against the company or individual with respect to the same offence.

2.7 ADMINISTRATIVE MONETARY PENALTIES (CLAUSES 2, 15 AND 18)

The bill adds new sections 16.1 to 16.25 of the MVSA, establishing an administrative monetary penalty system for specific contraventions of the MVSA, its regulations or an order issued under the MVSA. This type of penalty is similar to court-imposed fines but is applied by means of a streamlined administrative procedure. The main features of the new system are as follows:

- The Governor in Council determines the provisions of the MVSA, its regulations or any order that are to be addressed through the administrative monetary penalty system, and determines the amount of the penalty, which is not to exceed \$4,000 in the case of an individual or \$200,000 in the case of a company (new section 16.1).
- The Minister designates enforcement officers to investigate possible violations of the provisions identified by the Governor in Council, who may, in the performance of their duties, enter private property, other than a dwelling-house, and require the attendance of an individual during the visit (new section 16.11).
- When enforcement officers have reason to believe that a violation has been committed and that imposing a penalty would promote compliance with the legislation, they issue a notice of violation to the person concerned. The notice is in a form established by the Minister and contains a description of the violation, the amount of the penalty, the particulars regarding payment and the procedure for requesting a review (new sections 16.12 to 16.15).
- Recipients of a notice of violation can either pay the penalty, in which case no further proceedings will be taken against them for that contravention (new section 16.16), or they can request, within 30 days after the notice has been served, that the enforcement officer's decision be reviewed by the Transportation Appeal Tribunal of Canada (new definition of "Tribunal" in section 2 and new section 16.18(1)).

- Recipients of a notice of violation who fail to pay the amount specified or to file a request for a review are deemed to have committed the contravention (new section 16.17).
- When the recipient of a notice of violation asks that the enforcement officer's decision be reviewed, a Tribunal member must hold a review at which the Minister must prove that provisions designated by the Governor in Council have indeed been violated. The Tribunal member then determines whether a violation has been committed and, if so, whether the amount of the penalty should be amended (new sections 16.18(3), 16.18(4) and 16.19).
- The determination of the Tribunal member can be appealed to a panel of the Tribunal (new section 16.2).
- No administrative monetary penalty can be imposed later than two years after the commission of the violation (new section 16.23).
- Notations in the records of notices of violation showing that a person has contravened the provisions designated by the Governor in Council will be removed five years after the relevant penalties have been paid, unless the Minister deems that it is not in the public interest to do so (new section 16.25).

2.8 OFFENCES AND PUNISHMENT (CLAUSE 17)

The bill amends the MVSA so that an offence that is committed or continued on more than one day constitutes a separate offence for each day (new section 17(2.1)).

It also adds section 17(4), which stipulates that an individual or business is not to be found guilty of an offence under the MVSA if they establish that they exercised all due diligence to prevent the commission of the offence.

2.9 FORFEITURE (CLAUSE 17)

The bill amends the MVSA so that any vehicle, equipment or components seized in relation to an offence under the MVSA are to be forfeited to the government (new sections 19.1 and 19.2).

2.10 COMING INTO FORCE (CLAUSE 19)

The bill will come into force following Royal Assent, with the exception of clauses 4 (requirements for record-keeping related to foreign incidents, recalls and investigations) and 15 (administrative monetary penalties), which will come into force on a day to be fixed by order of the Governor in Council.

3 COMMENTARY

In recent years, the media have reported on concerns that the Canadian government has less power to recall vehicles than its U.S. counterpart.¹²

The Minister's vehicle recall powers were strengthened initially in 2014 by sections 212 to 230 of the *Economic Action Plan 2014 Act, No. 1*.¹³ These provisions brought the MVSA in line with American legislation by, for example, differentiating between a "defect" and "non-compliance," giving the Minister the power to order a company to inform consumers of safety defects (which may lead to a recall),¹⁴ increasing the maximum fines for an offence, and exempting Transport Canada inspectors from having to testify in a civil suit.

NOTES

1. [Bill S-2, An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act](#), 1st Session, 42nd Parliament.
2. Senate, [Debates](#), 1st Session, 42nd Parliament, 25 October 2016.
3. Senate, Standing Committee on Transport and Communications, [Fifth Report](#), 1st Session, 42nd Parliament, 24 November 2016.
4. Senate, [Debates](#), 1st Session, 42nd Parliament, 2 February 2017.
5. [Motor Vehicle Safety Act](#), S.C. 1993, c. 16.
6. Transport Canada, ["Strengthening Motor Vehicle Safety for Canadians,"](#) Backgrounder, 5 May 2016.
7. [Bill C-62, An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act](#), 2nd Session, 41st Parliament.
8. Transport Canada (2016).
9. Ibid.
10. *Motor Vehicle Safety Act*, s. 5(1).
11. Ibid., ss. 4 and 5(1).
12. See, for example, Scott Anderson and Vanmala Subramaniam, ["Transport Canada aware of deadly GM defect 8 months before recall,"](#) *CBC News*, 29 October 2014; Grace Macaluso, ["No buyback offer for Canadian owners of Fiat Chrysler vehicles,"](#) *Windsor Star*, 29 July 2015; Tom Krisher and Dee-Ann Durbin, ["Fiat Chrysler To Buy Back Defective Vehicles,"](#) *Huffington Post*, 27 July 2015.
13. [Economic Action Plan 2014 Act, No. 1](#), S.C. 2014, c. 20, ss. 202–230.
14. Transport Canada, ["Enhanced ability to deal with unsafe vehicles among amendments to improve safety for Canadians,"](#) News release, 28 March 2014.