

**BILL S-3: AN ACT TO AMEND THE MOTOR VEHICLE  
TRANSPORT ACT, 1987 AND TO MAKE CONSEQUENTIAL  
AMENDMENTS TO OTHER ACTS**

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## LEGISLATIVE HISTORY OF BILL S-3

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	14 May 2001
Second Reading:	15 May 2001
Committee Report:	6 June 2001
Report Stage:	11 June 2001
Third Reading:	11 June 2001

### SENATE

Bill Stage	Date
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Statutes of Canada 2001, c.13

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

Legislative history by Peter Niemczak

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BILL S-3: AN ACT TO AMEND THE MOTOR VEHICLE TRANSPORT ACT,  
1987 AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

BACKGROUND

On 31 January 2001, Bill S-3, an Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts, was introduced in the Senate by the Hon. Fernand Robichaud, Deputy Leader of the Government in the Senate.

The *Motor Vehicle Transport Act, 1987* (MVTA) applies to extra-provincial motor carrier (truck and bus) undertakings. These are domestic or foreign motor carriers that operate across provincial or international boundaries. The federal government has the constitutional responsibility for regulating such motor carriers, but the MVTA delegates to the provinces the authority to regulate them.

Amendments to the Act in 1987 made the exercise of provincial regulation (licensing) of extra-provincial trucking conditional on the application of federally prescribed fitness (safety and insurance) standards, and the elimination of most economic controls. The amendments also established federal authority to regulate the safe operation of extra-provincial motor carriers.

The MVTA currently consists of the following four major components:

- Section 3 – concerning safety – allows federal regulation of the safe operation of extra-provincial motor carrier undertakings;
- Part I (sections 4-6) – concerning bus transport – allows provinces to regulate extra-provincial bus undertakings using their own rules;
- Part II (sections 7-10) – concerning trucking – allows provinces to regulate extra-provincial truck undertakings using their own rules, provided that they allow all carriers that meet federally prescribed fitness criteria (safety and insurance aspects) to operate; and

- Part III (sections 11-15) – concerning intra-provincial trucking – allows provinces to regulate the intra-provincial operation of extra-provincial truck undertakings using their own rules.

Other components of the current Act cover enforcement and consequential amendments to other legislation.

According to Transport Canada's Position Paper entitled *Review of the Motor Vehicle Transport Act* (February 1998), the environment in which Canadian motor carriers operate has changed considerably since 1988. Deregulation ushered in an era in which governments focused on the safety performance of motor carriers. Canadian regulatory policy since 1988 has been driven in part by national and international trade initiatives which sought to remove obstacles to trade in transportation services. Both the North American Free Trade Agreement (NAFTA) and the Agreement on Internal Trade include commitments to harmonize standards and remove barriers in the motor carrier sector. Within Canada, the Agreement on Internal Trade process also provided an impetus for examining the highly regulated bus sector through a government/industry task force.

According to the departmental Position Paper, government and industry recognize that a consistent regime for motor carrier safety must be based on recognized standards. Since 1988, the federal and provincial governments have supported the development and implementation of Canadian standards through the National Safety Code for Motor Carriers (NSC), which sets comprehensive standards for commercial vehicle operations. Those standards are developed by committees made up of federal, provincial, territorial, industry and public interest representatives that report to government through the Canadian Council of Motor Transport Administrators. The NSC standards have been agreed on and are largely implemented by the provincial and territorial governments, albeit with some differences. The proposed changes to the MVTA set out in Bill S-3 are intended to support consistent application of the regulatory regime that has evolved across jurisdictions.

In announcing the proposed amendments, the Minister of Transport, the Hon. David Collenette stated, "These amendments establish carrier safety as the primary focus of the federal regulation of motor carriers and create the tools for ensuring national consistency in safety performance regulation. ... Specifically, the revisions use new National Safety Code

standards as the basis for creating a national safety rating system measured by actual on-road performance.”

Building on the reforms introduced in 1987, the proposed amendments would modernize and streamline the regulation of extra-provincial motor carrier (truck and bus) undertakings in Canada. Among other things, they would:

- create a national regulatory framework for provincial administration of a safety regime for extra-provincial motor carriers, based on national safety standards embodied in the National Safety Code for Motor Carriers (in particular, Standard 14, entitled *Compliance Review - Safety Ratings*);
- provide for national policy direction supporting the implementation of that framework; and
- ensure that Canada had the tools to harmonize motor carrier regulatory standards internationally by establishing mechanisms with various countries for the reciprocal recognition of motor carrier standards, ratings, and safety performance assessments.

In a news release, Mr. Collenette stated, “I am pleased that these amendments meet the Government of Canada’s objectives to promote safety, modernize transportation regulation, reduce the regulatory burden on industry, and help improve industry efficiency and productivity.”

## ANALYSIS

### A. General

Clauses 1 to 8 of the bill would amend the *Motor Vehicle Transport Act, 1987*, while clauses 9 to 11 would make consequential amendments to three other Acts and clause 12 concerns the coming into force of provisions of the bill.

Clause 1 would amend section 1 of the *Motor Vehicle Transport Act, 1987* to change the Act’s name to the Motor Vehicle Transport Act.

Clause 2 would repeal certain definitions in section 2(1) of the Act, including the definitions of a “local truck undertaking” and a “provincial transport board.” It would add two new definitions that are relevant to the bill: an “extra-provincial motor carrier undertaking” would mean an extra-provincial bus undertaking or an extra-provincial truck undertaking, both

of which are defined in the current Act; and a “provincial authority” would mean a person or body that had, under the law of a province, authority to control or regulate motor carrier undertakings operating exclusively in the province.

## B. Objectives

Clause 3 would replace section 3 of the Act and the heading before it with proposed sections 3 to 3.2.

The current Act does not specifically address overall transportation policy. Proposed section 3(1) would set out the objectives of the Act, which would be to ensure that the National Transportation Policy set out in section 5 of the *Canada Transportation Act* was carried out with respect to extra-provincial motor carrier undertakings; that the regulatory regime for those undertakings was focused on safety performance assessments based on the National Safety Code for Motor Carriers; and that the operating standards that applied to those undertakings were applied consistently across Canada. According to proposed section 3(2), the Governor in Council could, on the recommendation of the Minister after consultation with the provinces, issue transportation policy statements consistent with the objectives set out in proposed section 3(1). Proposed section 3(3) stipulates that, with respect to extra-provincial motor carrier undertakings, provincial authorities would be required to have regard to all transportation policy statements issued under proposed section 3(2).

The Minister could conduct any research, studies and evaluations that he or she considered necessary to carry out the objectives of the Act (proposed section 3.1).

The Minister could, after consultation with the provinces and on the terms and conditions that he or she specified, enter into agreements with provincial governments or other persons or bodies in support of the objectives set out in new section 3 (proposed section 3.2(1)). In addition, after such consultation the Minister could enter into arrangements with foreign states or agencies of those foreign states to promote the objectives of the Act, including the recognition by Canada of documents analogous to safety fitness certificates issued by those states or agencies and the recognition by them of safety fitness certificates issued in Canada (proposed section 3.2(2)). According to the departmental backgrounder on the proposed amendments to the MVTA, this reciprocal recognition of standards and ratings would promote a more efficient and

productive movement of goods and support the international harmonization objective of NAFTA.

### C. Bus Transport

The current sections 4 to 6 of the Act fall under the headings “Part I, Bus Transport.” Clause 4 would replace those headings with the heading “Bus Transport,” since the Act would no longer be broken into parts. Accordingly, proposed section 4 (under clause 4) would refer to a licence issued under the authority of the Act, rather than Part I of the Act.

Clause 5 would amend sections 5 and 6 to refer to a “provincial authority” rather than a “provincial transport board,” the phrase used in the current sections 5 and 6.

### D. Extra-provincial Motor Carrier Safety

Clause 5 would also replace current sections 7 to 10 with proposed sections 7 to 10.

In effect, proposed amendments to the MVTA would allow provinces and territories whose safety compliance regimes were compatible with the NSC standards to give an extra-provincial motor carrier (truck or bus) a safety rating, and to issue it with a safety fitness certificate that would be recognized by other Canadian jurisdictions. In the case of extra-provincial carriers that had poor safety performances, proposed amendments would also allow a province or territory, under the authority of the Act, to apply sanctions, including downgrading the ratings of such carriers and revoking their safety fitness certificates and thus their right to operate.

According to proposed section 7(1), subject to the regulations, no person or body could operate an extra-provincial motor carrier (truck or bus) undertaking without holding a safety fitness certificate issued by a provincial authority under the *Motor Vehicle Transport Act* or an analogous document prescribed by the regulations. A safety fitness certificate would not have to be in any particular form (proposed section 7(2)). Laws of a province respecting the safety of motor carrier undertakings would apply to an extra-provincial motor carrier undertaking to the extent that those laws were not inconsistent with the *Motor Vehicle Transport Act* (proposed section 7(3)).



Each provincial authority could, subject to the regulations, issue a safety fitness certificate allowing a person or body to operate an extra-provincial motor carrier undertaking and could revoke any certificate so issued (proposed section 8(1)). Such a certificate would be valid throughout Canada (proposed section 8(2)). The provincial authority that reviewed decisions to issue or revoke safety fitness certificates could establish any rules or procedures that would apply in that regard. In the absence of such rules or procedures, the procedures governing reviews of decisions with respect to the granting and revocation of licences of motor carrier undertakings in that province would apply (proposed section 8(3)).

If the Minister, after consultation with the provinces, was satisfied that the provincial authority in a province was not issuing safety fitness certificates in accordance with the Act, he or she could, by order, withdraw the province's power to issue such certificates (proposed section 9(1)), as of the date of the publication of the order in the *Canada Gazette* (proposed section 9(2)). An extra-provincial motor carrier undertaking that held a safety fitness certificate issued by a provincial authority that had in this way lost its power to issue certificates would, not later than 60 days after publication of the order, be required to file a declaration with another provincial authority that the undertaking was subject to supervision by it (proposed section 9(3)).

According to proposed section 10, if the Minister was satisfied that a provincial authority that had lost its power to issue safety fitness certificates under proposed section 9 had remedied its default and established a plan to ensure that it did not recur, he or she would, by order, be required to revoke an order made under proposed section 9(1).

#### E. Exemptions, Regulations, Enforcement, and Offence and Punishment

Clause 6 would replace the current section 16 of the Act and add a new section 16.1.

Proposed section 16(1) would provide that the Minister could, after consultation with any affected provinces, exempt from the application of any provision of the Act or the regulations, either generally or for a limited period, or in respect of a limited area, any person, or the whole or any part of any extra-provincial motor carrier undertaking or any class of those undertakings, provided the Minister believed the exemption would be in the public interest and

would not be likely to affect motor carrier safety. Proposed section 16(2) would provide that an exemption under proposed section 16(1) would be subject to any terms or conditions that the Minister might specify in it.

Proposed section 16.1(1) would provide broad powers for the Governor in Council, on the recommendation of the Minister after consultation with the affected provinces, to make regulations generally for purposes of carrying out the provisions of the Act. Included among other regulation-making powers would be those prescribing classes of extra-provincial motor carrier undertakings for purposes of the Act; prescribing analogous documents for the purposes of proposed section 7(1); respecting the criteria according to which provincial authorities could issue safety fitness certificates under proposed section 8; and prescribing the type, amount and conditions of insurance and bonding coverage that an extra-provincial motor carrier undertaking would have to hold. A regulation made under proposed section 16.1(1) could incorporate by reference: a) a standard relating to the safe operation of a motor carrier undertaking; and 2) the law of a province relating to motor vehicle undertakings (proposed section 16.1(2)).

Clause 7 of the bill would replace the current sections 17(1) and (2) of the Act with proposed sections 17(1) to (3) in order to conform with changes proposed in the bill. According to proposed section 17(1), if the Minister considered that the government of a foreign state had engaged in unfair, discriminatory or restrictive practices with regard to Canadian extra-provincial motor carrier undertakings operating in that state or between that state and Canada, he or she, with the concurrence of the Minister of Foreign Affairs, would be required to seek the elimination of those practices through consultations with that state. Section 17(2) would in future make reference to a “provincial authority” instead of the “provincial transport board” and to a “safety fitness certificate” instead of a “licence.” A provincial authority to which an order applied would be required to comply with it (proposed section 17(3)).

Clause 8 of the bill would add a new section 20.1 to the Act providing that a prosecution under the Act could be initiated, tried and determined by a court in any territorial jurisdiction in which the accused carried on business, regardless of where the subject matter of the prosecution arose.

Clause 9 of the bill would replace sections 22 to 35 of the Act with proposed sections 22 to 25. Proposed section 22 would now refer to a “provincial authority” rather than a “provincial transport board,” the phrase in the current section 22.

#### F. Transitional Provisions

The heading preceding proposed sections 23 to 24 would read “Transitional Provisions.”

According to proposed section 23, an extra-provincial motor carrier undertaking that, on the day immediately before the coming into force of this provision, was authorized to operate within a province, would be deemed to hold a safety fitness certificate issued under proposed section 8.

Under proposed section 24(1), where an application for a licence to operate an extra-provincial truck undertaking in a province was made to a provincial transport board under current section 8, and was pending on the day immediately before the coming into force of proposed section 24, the application would be deemed to have been made under proposed section 8. Under proposed section 24(2), where an application for a licence to operate an extra-provincial bus undertaking in a province was made to a provincial transport board under current section 5, and was pending on the day immediately before the coming into force of proposed section 24, the application would be deemed to have been made under proposed sections 5 and 8.

#### G. Annual Report

**The Minister would be required to prepare an annual report containing prescribed information. A copy of the report would have to be laid before each House of Parliament on any of the first 15 days on which that House was sitting after the Minister completed it (proposed section 25).**

#### H. Review of Provisions

After the expiry of four years after the coming into force of proposed section 26 and before the expiry of five years, the Minister would be required to undertake and complete a comprehensive review of the operation and effect of the amendments to the Act in the bill and,

without delay, to prepare a report on that review (proposed section **26(1)**). The report would have to be available to the Council of Ministers responsible for Transportation and Highway Safety at its next meeting after the report's completion (proposed section **26(2)**). **A copy of the report would have to be laid before each House of Parliament during the first 30 sitting days of that House following its completion (proposed section 26(3)).**

#### I. Consequential Amendments

Clauses 10 to 12 of the bill would make consequential amendments to the *Energy Supplies Emergency Act*, the *Excise Tax Act* and the *Canada Grain Act*.

#### J. Coming into Force

According to clause 13, the bill, any provision of the bill or any provision of any legislation enacted by the bill would come into force on a day or days to be fixed by order of the Governor in Council.

### COMMENTARY

The amendments to the *Motor Vehicle Transport Act, 1987* proposed in Bill S-3 were first introduced in the House of Commons on 2 March 2000 as Bill C-28 (2<sup>nd</sup> Session, 36<sup>th</sup> Parliament), but died on the Order Paper with the dissolution of Parliament. Bill C-28 was itself preceded by another bill, C-77, introduced in the House of Commons on 25 March 1999 (1<sup>st</sup> Session, 36<sup>th</sup> Parliament). Bill C-77 did not go beyond first reading and it died on the Order Paper with the prorogation of Parliament. Bill C-77 included a number of apparently controversial provisions relating to the economic deregulation of the bus industry; those provisions were not included in Bill C-28 and were to be examined by a parliamentary committee. The Minister stated at the time, "While I remain committed to addressing the bus provisions, I believe that the important safety provisions included in the amendments [in Bill C-28] should not be delayed while further debate takes place."