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## LEGISLATIVE SUMMARY



### **Bill C-62:** **An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act**

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

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 of Bill C-62*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-62: AN ACT TO AMEND THE MOTOR VEHICLE SAFETY ACT AND TO MAKE A CONSEQUENTIAL AMENDMENT TO ANOTHER ACT

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## 1 BACKGROUND

Bill C-62, An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act (short title: Safer Vehicles for Canadians Act), was introduced by the Honourable Lisa Raitt, Minister of Transport, and read for the first time in the House of Commons on 3 June 2015.<sup>1</sup> It amends the *Motor Vehicle Safety Act*<sup>2</sup> (MVSA) to give the Minister of Transport new vehicle recall powers that are more closely aligned with those of the United States government.<sup>3</sup>

The bill enables the Minister to take the following steps:

- order a company to issue a recall;
- require manufacturers to fix defective or non-compliant vehicles and equipment at their expense;
- order a manufacturer or importer to prevent the retail sale of defective or non-compliant vehicles;
- include more detailed information in a Notice of Defect and Notice of Non-compliance;
- 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, with no cap, for any actions that contravene the MVSA; and
- provide Transport Canada inspectors with new powers to collect more information for enforcement and investigation activities.<sup>4</sup>

The importation of motor vehicles and motor vehicle equipment into Canada is governed by the safety standards established by the MVSA,<sup>5</sup> 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.<sup>6</sup>

## 2 DESCRIPTION AND ANALYSIS

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

### 2.1 DEFECTS AND NON-COMPLIANCES (CLAUSES 3 TO 5)

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 verification of compliance (new section 2.1); and
- compile records regarding foreign incidents, recalls and investigations concerning vehicles and equipment similar to those sold in Canada and provide them to the Minister at the Minister's request (new sections 5(2) to 5(2.3)).

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).

## 2.2 NOTICE OF DEFECT AND OF NON-COMPLIANCE (CLAUSES 6 TO 8)

The bill enacts new sections 10.3 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 (new section 10.6).
- The Minister may, 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).

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).

### 2.3 INSPECTIONS (CLAUSES 9 TO 11)

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 sections 15 and 16).

The bill also stipulates that inspectors are able to move about freely on private property for the purpose of verification or investigation, and to require the attendance of persons they consider relevant (new sections 15(1.1) and 15(1.2). They are also able to disassemble a vehicle or equipment found on the site of a verification or investigation (amended section 15(2)). 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 (amended section 16).

The bill amends section 15 of the MVSA to prevent Transport Canada inspectors from entering a dwelling-house to conduct an inspection or investigation (amended section 15(1) and new section 15(1.1), MVSA).

### 2.4 ADMINISTRATIVE MONETARY PENALTIES (CLAUSES 2, 12 AND 15)

The bill adds new sections 16.1 to 16.23 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 (new section 16.11).
- When enforcement officers have reason to believe that a violation has been committed, 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 16.14).
- 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 16.15), 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 16.16(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 16.16 and 16.18).
- The determination of the Tribunal member can be appealed to a panel of the Tribunal (new section 16.19).
- No administrative monetary penalty can be imposed later than two years after the commission of the violation (new section 16.22).
- 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 16.23).

## 2.5 OFFENCES AND PUNISHMENT (CLAUSE 13)

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)).

## 2.6 FORFEITURE (CLAUSE 14)

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).

## 2.7 COMING INTO FORCE (CLAUSE 16)

The bill will come into force following Royal Assent, with the exception of clause 4 (requirements for record-keeping related to foreign incidents, recalls and investigations) and clause 12 (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.<sup>7</sup>

The Minister of Transport's vehicle recall powers were strengthened initially in 2014 by sections 212 to 230 of the *Economic Action Plan 2014 Act, No. 1*.<sup>8</sup> 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)<sup>9</sup>, increasing the maximum fines for an offence, and exempting Transport Canada inspectors from having to testify in a civil suit.

According to Transport Canada, the provisions added to the MVSA by Bill C-62 complement the powers given to the Minister in 2014 and further align Canada's recall process with that of the United States.<sup>10</sup>

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## NOTES

1. [Bill C-62, An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament.
2. [Motor Vehicle Safety Act](#), S.C. 1993, c. 16.
3. Transport Canada, "[Safer Vehicles for Canadians Act](#)," Backgrounder, 3 June 2015. These measures were announced in Budget 2015: Government of Canada, "Enhancing the *Motor Vehicle Safety Act*," in "[Chapter 4.3: Protecting Canadians](#)," *Strong Leadership: A Balanced-Budget, Low-Tax Plan for Jobs, Growth and Security*, 21 April 2015.
4. Transport Canada (2015).
5. *Motor Vehicle Safety Act*, s. 5(1).
6. *Ibid.*, ss. 4 and 5(1).
7. For example, "[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](#)," *The Windsor Star*, 29 July 2015; Tom Krisher and Dee-Ann Durbin, "[Fiat Chrysler To Buy Back Defective Vehicles](#)," *Huffington Post*, 27 July 2015.
8. [Economic Action Plan 2014 Act, No. 1](#), S.C. 2014, c. 20, ss. 202–230.
9. Transport Canada, "[Enhanced ability to deal with unsafe vehicles among amendments to improve safety for Canadians](#)," News release, 28 March 2014.
10. Transport Canada, "[New legislation introduced for stronger vehicle recall powers: Safer Vehicles for Canadians Act includes new recall powers and fines for manufacturers](#)," News release, 3 June 2015.