

MOTOR VEHICLE SAFETY ACT AMENDMENTS PUT TRANSPORT MINISTER IN THE DRIVER'S SEAT WITH NEW RECALL, INVESTIGATION AND PENALTY RELATED POWERS

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With the passing of Bill S-2 into law, [1] Canadian motor vehicle and equipment manufacturers and importers need to be aware of new powers given to Transport Canada directed at improving the safety of the vehicles and equipment being manufactured and imported for sale to Canadians.

Summary

The Motor Vehicle Safety Act ("MVSA") regulates the standards that manufacturers and importers of motor vehicles and defined equipment (tires and child restraints) intended for the Canadian market (hereinafter "Companies") must meet at the time of manufacture or importation, as well as the obligations they have to meet when they identify a safety related defect or non-compliance in products that are already in the field. Bill S-2 addresses perceived shortcomings in the MVSA and more closely aligns Canada's federal vehicle safety laws with those of the United States.

Although the Act and amendments reference powers given the "Minister", in this Bulletin we will refer to Transport Canada ("**TC**"), the Minister of Transport's designate.

The following highlights noteworthy changes to the MVSA, but does not examine every new or amended section of the Act.

Recalls and Repairs

Prior to these amendments, TC had no power to order Companies to correct an identified defect or non-compliance. Now it does if it is in the interest of safety.

TC can also order a Company to pay the costs of effecting the correction. The correction can be effected by repairing, replacing, reimbursing for repairs done pre-notice or reimbursing the value of the vehicle/equipment where it is returned after the first retail sale. The Amendments expressly make these benefits applicable to dealers as well as to other vehicle/equipment owners. They also make it clear that where such corrections are



undertaken, other legal rights and remedies (e.g. to recover reasonable costs) are not affected. The Company can also be ordered to make corrections before the vehicle/equipment is offered for sale to the first retail purchaser.

Before making an order requiring a Company to provide notice of a defect or non-compliance, correct it and/or pay for the costs of the correction, TC must make a preliminary determination, in consultation with the Company, that an order is in the interest of safety; notify the Company of the rationale; invite the Company to respond; and then publish the preliminary determination and invite comments. Once a final decision is made, the Company must be notified of the decision and rationale and the decision is then published. An order can be varied or revoked if new relevant information becomes available.

Investigation and Enforcement

TC can now order a company to conduct tests, analyses or studies of a vehicle or equipment relating to defects or compliance verification and to provide the results. It can designate collision investigators to collect information related to collisions being investigated. And the powers of inspectors for a purpose related to verifying compliance have been strengthened and clarified.

There is also a brand new class of person called an "Enforcement Officer" who has search and seizure powers available to determine if a violation of the Act has occurred.

Consent Agreements and Administrative Monetary Penalties (AMPs)

The amendments introduce new means for TC to pursue contraventions of the Act short of the full-on criminal prosecution that was necessary before the amendments.

The Act now provides for Consent Agreements where there has been a contravention (or TC believes there has). Consent agreements can provide for different (presumably lower) penalties than those otherwise imposed by the Act and they will bring prosecution proceedings to an end. They are filed with the Federal Court and must be published.

While not yet in force, certain of the amendments also introduce a new Administrative Monetary Penalties regime. The changes permit the government to treat certain (as yet unidentified) contraventions as "violations" that are punishable by fines, a max per violation of \$4,000 for individuals and \$200,000 for corporations (much less than what otherwise applies to "offences" under the Act). The Act treats continuing violations as separate violations for each day they continue. It also provides for the defence of "due diligence" where a violation is alleged.

Promoting Innovation and the Development of New Technology



The amendments permit companies to apply for an order granting an exemption from prescribed standards where doing so will promote the development of superior new safety features or new kinds of vehicles, technologies, vehicle systems or components. One example cited is advanced front lighting systems and adaptive driving beam technologies. An exemption would permit the use of this technology until CMVSS are amended to permit it.

Coming Into Force

All of the amendments are now in force, with the exception of 1) requirements for record-keeping related to "prescribed subject matters" which the government has signalled will relate to defects and non-compliance in "foreign" vehicles that are similar to those sold in Canada; and 2) the AMPs regime. Both will come into force on a day to be fixed by order of the Governor in Council.

[1] Bill S-2 received Royal Assent on March 1, 2018. See the section of the bulletin entitled Coming Into Force for more information about when specific provisions of the law will take effect. The Library of Parliament LEGISinfo page for Bill S-2 is available here.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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