



LEGISLATION REVIEW CONSULTATION DOCUMENT

May 2006

Introduction

Background

The Motor Dealer Council of British Columbia (MDC) board of directors is responsible for establishing strategic direction and overseeing the operations of the MDC. It is made up of “public at large” and motor dealer industry representatives who are selected through an extensive nomination process that involves consumer and industry associations, government and the general public.

In the summer of 2004, the MDC board established a Legislation Review Committee to address the need to update and modernize legislation governing the motor dealer industry in British Columbia. The mandate of this committee is to

- lead a comprehensive province-wide industry consultation to review and update legislation applying to the wholesale and retail sale of motor vehicles,
- develop a broadly based industry and consumer consensus on needed changes to legislation and regulations for recommendation to government, and
- prepare and deliver to government specific recommendations for revising the legislation and regulations.

The Legislation Review Committee is chaired by former MDC director Gary Cowell and has members from the MDC board, MDC staff, and representatives from the Automotive Retailers Association, British Columbia Automobile Association, Insurance Corporation of British Columbia, Insurance Brokers of British Columbia, New Car Dealers Association of BC, and the Recreation Vehicle Dealers Association of BC.

The committee began consultations in September 2004 by sending requests for input on issues, challenges, and areas of concern to 15 organizations representing a broad cross-section of stakeholders,* and to MDC staff. Over the following year, the committee worked to review the input received and compile a list of proposed legislative changes to address the issues that were identified. The proposed changes, as described in this document, were then approved for further consultation by the MDC board in January 2006.

Purpose of this Document

The purpose of this document is to outline the legislative changes proposed by the Legislation Review Committee in order to provide industry stakeholders and the public with an opportunity to make submissions on these changes. The committee will

* In developing the proposed legislative changes, the following organizations were asked to provide input:

ADESA Vancouver
Automotive Retailers Association
BC Auction Association
BC Automobile Association
BC Lessors Advisory Group

BC Public Interest Advocacy Centre
BC Chamber of Commerce
Better Business Bureau of Mainland BC
Canadian Finance and Leasing Association
Coalition of BC Businesses

Insurance Brokers Association of BC
Insurance Corporation of BC
Motor Dealer Customer Compensation Fund Board
New Car Dealers Association of BC
Recreation Vehicle Dealers Association of BC

incorporate the results of this consultation into a final list of recommended legislative changes to be submitted to the MDC board of directors for approval.

How this document is organized

This document outlines the proposed legislative changes by subject matter within the following parts:

- Part 1: Changes regarding who and what is subject to the *Motor Dealer Act*
- Part 2: Changes to clarify existing requirements in the *Motor Dealer Act* and regulations
- Part 3: Changes regarding the Motor Dealer Customer Compensation Fund
- Part 4: Changes regarding the authority and powers of the Motor Dealer Council
- Part 5: Changes regarding advertising requirements
- Part 6: Changes regarding requirements for purchase and sale
- Part 7: Changes regarding requirements to disclose material facts
- Part 8: Changes to incorporate key provisions of the *Business Practices and Consumer Protection Act* into the *Motor Dealer Act*
- Part 9: Housekeeping changes
- Appendix: The appendix contains excerpts of the *Business Practices and Consumer Protection Act* that are referenced in Part 8 of this document.

How to provide comment

Please direct your written submissions on the proposed legislative changes to:

Legislation Review Committee
c/o Motor Dealer Council of BC
150 – 6400 Roberts Street
Burnaby, BC V5G 4C9

Fax: 604.294.2264

E-mail: legislationreview@mdcbc.com

Written submissions will be accepted until July 14, 2006.

Next steps in the legislation review process

The Legislation Review Committee will review all written submissions received by **July 14, 2006** and report to the MDC board of directors on the results of the consultations and its final recommendations for legislative changes.

The MDC board is expected to make a final decision on the list of recommended legislative changes by fall of 2006. The recommendations will then be submitted to government, and the MDC will work with government to draft the required amendments.

Proposed Legislative Changes

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1. Changes regarding who and what is subject to the *Motor Dealer Act*

Currently, the *Motor Dealer Act* provides authority to license and regulate those who act as motor dealers and their salespeople. The changes identified in this section are focussed on broadening and clarifying the scope of the Act to include others in the industry who play a significant role in the provision and sale of personal use vehicles to the public. These changes are designed to improve the ability of the Motor Dealer Council to protect consumers and to ensure a level playing field for all those involved in the business of selling personal use vehicles to the public.

(a) Regulate motor vehicle manufacturers, wholesalers, and brokers under the *Motor Dealer Act*

Description

Create new classes of licence for motor vehicle manufacturers, wholesalers and brokers and regulate their activities under the *Motor Dealer Act*. This change will allow the Motor Dealer Council to know who is engaged in the industry in British Columbia and to ensure that their activities do not involve the sale of personal use vehicles directly to the public.

Implications

No direct impact on current licensees. Manufacturers, wholesalers and brokers will be required to maintain a licence and will be subject to the oversight of the registrar. They will be required to comply with those sections of the Act that are relevant to their business, such as requirements regarding advertising and the regulation of odometer readings.

Rationale

Manufacturers, wholesalers and brokers are an integral part of the industry and are licensed in other jurisdictions such as Ontario. This change will enhance the Motor Dealer Council's ability to protect consumers. It will allow the Motor Dealer Council to be better aware of who is involved in the industry and will make the regulation of the marketplace more fair and effective.

(b) Eliminate the exemption from the *Motor Dealer Act* for bailiffs and collection agents

Description

Remove section 14(m) of the Motor Dealer Act Regulation, which provides a general exemption from the Act for bailiffs and collection agents.

Implications

No direct impact on current licensees. Bailiffs and collection agents who deal with motor vehicles will be required to maintain a licence and will be subject to the oversight of the registrar.

Rationale

Bailiffs and collection agents are an integral part of the motor dealer industry and should be subject to the *Motor Dealer Act* when they do business involving motor vehicles. This change will broaden the Motor Dealer Council's ability to protect consumers. It will allow the Motor Dealer Council to be better aware of who is involved in the industry and will make the regulation of the marketplace more fair and effective.

(c) Eliminate the exemption from the *Motor Dealer Act* for those who conduct motor vehicle auctions

Description

Remove sections 6(b) and 14(b) of the Motor Dealer Act Regulation, which provides a general exemption from the Act for those who conduct auctions of motor vehicles.

Implications

No direct impact on current licensees. Those conducting auctions of motor vehicles will be required to maintain a licence and will be subject to the oversight of the registrar.

Rationale

Motor vehicle auctions are an integral part of the motor dealer industry and should be subject to the *Motor Dealer Act*. This change will broaden the Motor Dealer Council's ability to protect consumers. It will allow the Motor Dealer Council to be better aware of who is involved in the industry and will make the regulation of the marketplace more fair and effective.

(d) Eliminate the exemption from the *Motor Dealer Act* for agents acting on behalf of purchasers

Description

Remove section 14(n) of the Motor Dealer Act Regulation, which provides a general exemption from the Act for those who act only as an agent for a purchaser.

Implications

No direct impact on current licensees. Those acting as agents for purchasers of motor vehicles will be required to maintain a licence and will be subject to the oversight of the registrar.

Rationale

Agents acting for purchasers are an integral part of the motor dealer industry and should be subject to the *Motor Dealer Act*. In particular, they play a critical role in providing information and material facts to consumers. This change will broaden the Motor Dealer Council's ability to protect consumers. It will allow the Motor Dealer Council to be better aware of who is involved in the industry and will make the regulation of the marketplace more fair and effective.

(e) Clarify the exemption from the *Motor Dealer Act* for lenders

Description

Clarify the wording in section 14(d) of the Motor Dealer Act Regulation, which exempts lenders from the *Motor Dealer Act*, so that this provision exempts only those who are licensed as lenders either federally or provincially.

Implications

No direct impact for current licensees or for licensed lenders involved in motor vehicle transactions. Lenders who are not licensed as lenders and who are lending money in motor vehicle transactions will be required to maintain a licence and will be subject to the oversight of the registrar.

Rationale

Lenders who are licensed federally or provincially are already subject to a strict regulatory regime and do not need to be regulated under the *Motor Dealer Act*. However, unlicensed lenders who offer vehicle loans, particularly to purchasers who may not otherwise qualify for a loan, are an integral part of the motor dealer industry and should be subject to the *Motor Dealer Act*. This change will broaden the Motor Dealer Council's ability to protect consumers. It will allow the Motor Dealer Council to be better aware of who is involved in the industry and will make the regulation of the marketplace more fair and effective.

(f) Expand the definition of "motor vehicle" to include all types of recreation vehicles

Description

Change the definition of motor vehicle to include recreation vehicles, including campers and tent trailers. Clarify that trailers used exclusively for the transportation of livestock are not motor vehicles under the *Motor Dealer Act*.

Implications

No direct impact on current licensees. Those in the business of selling any kind of recreation vehicle will be required to maintain a licence and will be subject to the oversight of the registrar.

Rationale

The business of buying and selling campers and tent trailers is comparable to other recreation vehicles currently defined as motor vehicles and should be licensed in the same way.

2. Changes to clarify existing requirements in the Act and regulations

(a) Establish definitions for the terms “New”, “Used” and “Demonstrator”

Description

Establish definitions in the *Motor Dealer Act* for the terms “New”, “Used”, and “Demonstrator” in relation to the sale of motor vehicles.

Implications

The requirements of legislation and policy in relation to these types of vehicles will be more clear and enforceable.

Rationale

Currently, there are no statutory definitions for these terms, although they are referred to in the *Motor Dealer Act* and regulations, and in the registrar’s directives and guidelines. Establishing fixed and clear definitions will improve the clarity of legislative and policy requirements.

(b) Establish a definition for the term “regular price”

Description

Establish a definition in the *Motor Dealer Act* for the term “regular price” in relation to the sale of motor vehicles.

Implications

The meaning of regular price will provide a clear and consistent standard for applying requirements regarding the advertising of “reduced” prices.

Rationale

Currently, there is no statutory definition for “regular price”. Establishing a fixed and clear definition will make it easier for motor dealers to understand and comply with advertising requirements.

(c) Establish definitions and procedures for handling deposits, partial payments and down payments

Description

Provide authority under the *Motor Dealer Act* to make regulations concerning deposits, partial payments and down payments. Define these terms for the purposes of the Act and regulations, and establish requirements for refunding these payments.

Implications

The Motor Dealer Council will work with all stakeholders to draft regulations governing the administration of these types of payments, and in particular the return of these

payments where a purchase agreement is terminated or not completed. Specific provisions regarding these requirements will be included in the standard form agreements referenced in item 6 (a) of this document.

Rationale

The lack of clarity in this area reduces consumer protection and leads to additional claims against the compensation fund.

3. Changes regarding the Motor Dealer Customer Compensation Fund

(a) Clarify the requirements for filing an application for compensation

Description

Add the following requirements to clarify procedures for applying for compensation:

- i. an application must be filed within 90 days of a refusal or failure to pay by a dealer
- ii. the date of the application must not be more than 4 years from the date of the transaction

Implications

The requirements regarding the timing of applications for compensation will be more clear.

Rationale

This change will provide more clarity as to when an application for compensation may be made and ensures the timely resolution of matters related to compensation.

(b) Make payment of any money owed by a dealer to the compensation fund a requirement for maintaining a licence

Description

Include an explicit statement in the Act that the payment of any outstanding balances owed to the compensation fund is a condition for maintaining a licence.

Implications

The failure to pay money owed to the compensation fund will be grounds for the registrar to suspend, cancel, or refuse to renew a dealer's license.

Rationale

This change will clarify the requirement for dealers to remain in good standing regarding payments to the compensation fund, and the potential consequences of not doing so.

(c) Where a claim is paid out, require the dealer responsible to reimburse the compensation fund within 30 days

Description

Establish that where a claim is paid out of the fund, the dealer responsible for the claim has 30 days in which to reimburse the fund, including all the investigative and administrative costs associated with the claim. If the fund is not reimbursed within 30 days, the registrar may convene a hearing, and suspend or cancel the dealer's licence.

Implications

There will be more clear time limits and consequences for failure to reimburse the compensation fund. This should result in more timely payments and improve the balance of payments to the compensation fund.

Rationale

Late repayments and failure to repay the fund reduce the liquidity of the fund and increase administrative costs. Having more clearly established time limits and consequences for failure to repay will improve compliance and reduce the amount of administrative time currently required to collect outstanding reimbursements.

(d) Clarify the nature of the losses that are eligible for compensation

Description

Add the following to clarify the nature of the losses that are eligible for compensation from the fund in section 5(1)(a) of the Motor Dealer Customer Compensation Fund Regulation:

- i. A definition and/or further description of the term “liquidated amount” in section 5(1)(a).
- ii. A definition and/or further description of the term “other failure of the motor dealer” in sections 5(1)(a)(ii) and 5(1)(c)(ii).
- iii. Definitions and procedural requirements for “deposits”, “partial payments”, and down payments” as used in sections 5(1)(a)(i) and 6(a) (see also item 2 (c) above).
- iv. A definition and/or further clarification of the term “dishonest conduct” in sections 5(1)(a)(iii) and 5(1)(c)(iii).
- v. Clarify the term “extended warranty” in section 5(1)(b) to refer only to extended warranties offered by motor dealers, not manufacturers.

Implications

It will be easier for the compensation fund board, dealers, and consumers to understand and quantify the losses that are eligible for compensation.

Rationale

Determining the nature of these losses is often a source of confusion for both dealers and consumers, and increases the amount of time and effort required for the Compensation Fund Board to make a determination.

These changes will bring more certainty to the compensation fund claims process and allow for more timely processing of applications.

(e) Make losses arising from maintenance plans eligible for compensation

Description

Expand the type of purchases eligible for compensation in sections 4(a)(ii) and 5(1)(b) of the Motor Dealer Customer Compensation Fund Regulation to include “maintenance plans” (to be defined).

Implications

Consumers will be eligible for compensation in relation to the purchase of a maintenance plan, as well as the existing eligibility for the purchase of an extended warranty or service plan.

Rationale

This change will provide an additional remedy for consumers.

(f) Clarify the amount eligible for compensation in a claim regarding an extended warranty, service plan or maintenance plan

Description

Change the description of eligible loss for an extended warranty or service plan in section 5(1)(b) of the *Motor Dealer Customer Compensation Fund Regulation* from the “unexpired portion of the warranty” to the actual purchase price of the warranty, including any funds that the dealer may have failed to remit to the warranty company.

Implications

The amount eligible for compensation on claims regarding extended warranties, service plans and maintenance plans (see item 3(h) below) will be more clearly identifiable.

Rationale

Currently, it is difficult to quantify the “unexpired portion” of an extended warranty. This change will provide more certainty as to what is compensable.

(g) Clarify the requirements for demanding a refund from a dealer prior to applying for compensation

Description

Clarify the requirements for a customer to demand a refund from a dealer prior to being eligible to apply for compensation by:

- i. Requiring that the demand to the dealer be in writing, and
- ii. Making the requirement contingent on the dealer being actively engaged in business at the time of the demand.

Implications

Consumers will not have to attempt to make a demand to a dealer that is no longer in business and may be impossible to locate. There will be written evidence of the required demand having been made.

Rationale

Trying to locate a dealer that is no longer in business is an unnecessary impediment for consumers in making an application for compensation. Requiring that the demand be in writing provides evidence that the demand requirement was met and forces the consumer to articulate the nature of the loss.

(h) Increase the maximum amount of compensation from \$20,000 to \$50,000

Description

Change the maximum amount of compensation payable in section 9 of the Motor Dealer Customer Compensation Fund Regulation from \$20,000 to \$50,000.

Implications

Consumers will be eligible for up to \$50,000 in compensation.

Rationale

This increase reflects the increased value of motor vehicle transactions and will provide better protection for consumers.

(i) Increase the time allowed for dealers to pay additional contributions to the fund to 30 days

Background

Section 3 of the Motor Dealer Customer Compensation Fund Regulation requires motor dealers to pay an "additional contribution" to the fund if the registrar determines that additional contributions are required to ensure the sufficiency of the fund.

Description

Increase the time allowed for dealers to pay an additional contribution to the fund under section 3(3) of the Motor Dealer Customer Compensation Fund Regulation from 21 days to 30 days from receipt of the notice that an additional contribution is required.

Implications

Dealers will have an additional 9 days in which to pay any required additional contribution to the compensation fund.

Rationale

This change provides for a consistent 30 day period for all payments to the fund, which reflects current practices.

(j) Require quarterly reports to the compensation fund board on revenues and expenditures for the fund

Description

Require that the registrar provide the compensation fund board with quarterly statements of the revenues and expenditures for the compensation fund, in addition to the existing requirement in section 2(5) of the Motor Dealer Customer Compensation Fund Regulation for a quarterly statement of the assets of the fund.

Implications

The registrar will be required to prepare quarterly statements of the revenues and expenditures of the compensation fund and submit them to the compensation fund board.

Rationale

The additional reporting requirements will provide the board with a more complete quarterly picture of the status and activity in the compensation fund.

4. Changes regarding the authority and powers of the Motor Dealer Council

(a) Clarify the registrar's authority to determine compliance with signage requirements

Description

Clarify the registrar's authority to determine whether signs required on business premises to identify licensed dealers meet the requirements in section 3(1)(a)(v) of the *Motor Dealer Act*.

Implications

The Act will clearly state that the role of the registrar is to determine whether a dealer has complied with the requirements for identifying business premises.

Rationale

It should be clear in this provision, as it is in other similar provisions in the Act, that the registrar has the authority to determine whether the requirements of the Act are being met.

(b) Provide the registrar with authority to consolidate hearings

Description

Provide the registrar with the authority to consolidate a matter or hearing with any other matter or hearing.

Implications

The registrar will have the authority to require that different matters be addressed at the same time, where the registrar believes there is good reason for doing so. For example, where there are two different matters involving the same licensee, the registrar could choose to hear both matters at the same time.

Rationale

Allowing the registrar to consolidate issues will allow related matters to be dealt with more quickly and efficiently.

(c) Make it an offence to fail to comply with a registrar's order or directive

Description

Add the failure to comply with an order or directive made by the registrar to the list of offences in section 35(1) of the *Motor Dealer Act*.

Implications

Where circumstances warrant, the registrar may prosecute a person who violates a registrar's order.

Rationale

Along with other changes providing for compliance orders and administrative penalties, this change provides the registrar with an additional enforcement option where prosecution in the courts is appropriate.

(d) Provide authority for inspectors to copy business records

Description

Provide additional authority in section 26 of the *Motor Dealer Act* for inspectors to make copies of business records when necessary in the course of an inspection.

Implications

Inspectors will have the authority to make copies of a licensee's business records when necessary in the course of an investigation.

Rationale

The ability to make copies of business records will make inspections and investigations involving a licensee's business records easier and more efficient.

(e) Limit the liability of the Motor Dealer Council Board of Directors

Description

Extend the limitation of liability granted to the registrar and others under section 37(1) of the *Motor Dealer Act* to the members of the MDC Board of Directors.

Implications

The members of the MDC board will not be liable for their actions as board members when they are exercising their authority in good faith.

Rationale

These protections are necessary to protect the board members from lawsuit for decisions made in good faith, and to ensure that the MDC is able to attract and keep the most qualified board members.

5. Changes regarding advertising requirements

(a) Clarify what is subject to advertising requirements

Description

Clarify the advertising requirements in section 13(1) of the *Motor Dealer Act* by removing the words “in every written sale or purchase agreement that the motor dealer enters into, and”. It currently reads (underlining added):

13(1) A motor dealer must, in every written sale or purchase agreement that the motor dealer enters into in respect of a motor vehicle, and in every advertisement or written representation, include

- a) the name of the motor dealer and the word “dealer” followed by the registration number issued to the motor dealer under this Act, and*
- b) other prescribed information.*

Implications

The application of the advertising requirements in the Act and regulations will be more clear and consistent.

Rationale

Currently there is some inconsistency between the Act and the regulations in the way that the advertising requirements are described. This change will rectify this inconsistency. Requirements for purchase and sale agreements should be addressed separately (see Part 6 of this document).

(b) Eliminate the requirement to include the dealer registration number in advertisements

Description

Remove the requirement in section 13(1)(a) of the *Motor Dealer Act* to include both the dealer registration number and the name of the dealer in advertisements. Require that only the registered name of the dealer be included.

Implications

Dealers will no longer be required to include their registration number in advertisements.

Rationale

Providing the registration number does not really assist consumers and is therefore an unnecessary requirement.

(c) Add the dealer stock number to information that must be affixed to new vehicles

Description

Add the dealer stock number to the information required to be affixed to new vehicles in section 26 of the *Motor Dealer Act Regulation*.

Implications

Dealers will be required to affix the dealer stock number to all new vehicles along with other information currently required.

Rationale

This is important information for consumers and should be clearly indicated on all vehicles offered for sale.

(d) Include additional requirements for information that must be affixed to used vehicles

Description

Add the following to the requirements for information to be affixed to used vehicles in section 27 of the Motor Dealer Act Regulation:

- i. The vehicle identification number or numbers, make and model
- ii. The dealer stock number
- iii. The total asking price of the vehicle.

Implications

Dealers will be required to affix this additional information to all used vehicles.

Rationale

This is important information for consumers and should be clearly indicated on all vehicles offered for sale.

(e) Eliminate the exemption from advertising requirements for vehicles in storage

Description

Remove section 28(a) of the Motor Dealer Act Regulation, which exempts vehicles in a storage area from the requirements regarding information that must be affixed to a vehicle being offered for sale.

Implications

New and used vehicles that have been prepared for sale but are being held in a storage area will be subject to the same advertising requirements as vehicles on the sales lot.

Rationale

This change will make it easier to more uniformly enforce the advertising requirements.

6. Changes regarding requirements for purchase and sale

(a) Establish a standard purchase agreement, consignment agreement, and lease agreement

Description

Replace the current provisions regarding information required to be provided in purchase agreements (sections 21 and 23 of the Motor Dealer Act Regulation), consignment agreements (sections 2 and 4 of the Motor Dealer Consignment Sales Regulation), and lease agreements (section 2 of the Motor Dealer Leasing Regulation) with standard form agreements prescribed in the regulations.

Dealers will be required to use the standard agreement or a variation that has been approved by the registrar.

Implications

The MDC will develop standard purchase, consignment and lease agreements that will be added as a schedule to the corresponding regulations. All dealers will then be required to use the standard agreements or a variation that has been approved by the registrar. Copies of the agreements will be supplied to dealers by the MDC or an approved supplier.

Rationale

Standard form agreements are commonly used in other industries to enhance consumer protection in complex transactions. Within the motor dealer industry, standard form agreements will provide for increased protection and confidence for consumers by ensuring consistent terms and disclosure everywhere in the province.

(b) Clarify requirements to provide duplicate copies of agreements

Description

Currently section 21(3) of the Motor Dealer Act Regulation requires a dealer to provide a customer with a duplicate copy of a “sales, lease and consignment agreements”. This language will be changed to cover all forms of sales agreements, for example an “offer to purchase” agreement.

Implications

Motor dealers will be required to provide customers with duplicate copies of any type of agreement at the time it is signed by the customer, including an offer to purchase.

Rationale

Ensuring that duplicate copies of all agreements are provided at the time of signing will enhance consumer protection and confidence.

(c) Add a requirement to note a before and after odometer reading on the transfer/tax form

Description

Currently, section 25 of the Motor Dealer Act Regulation requires that where the repair or replacement of an odometer results in a change to the odometer reading, the dealer must record both readings on the purchase agreement and other documents. This change will require the dealer to also record these readings on the transfer/tax form.

Implications

Where applicable, dealers will have to record a before and after odometer reading on the transfer/tax form.

Rationale

The failure to record this information on the transfer/tax form is a common source of confusion for dealers and consumers.

(d) Replace the requirement for trust accounts for consignment sales with a bond or surety requirement

Description

The current requirement that dealers hold the proceeds of a consignment sale in a trust account will be replaced with a requirement that dealers acquire a bond or surety to protect the consignor. The amount of the bond or surety required will be \$25,000 for motor vehicle sales and \$75,000 for recreation vehicle sales.

Implications

Dealers engaging in consignment sales will no longer be required to maintain a trust account. Instead they will require a bond or surety in the amount prescribed.

Rationale

A bond or surety system will provide similar protection for consignors and will be less complicated and expensive for dealers than maintaining a trust accounting system.

(e) Allow consumers to waive the 24-hour cooling off period when taking possession of a leased vehicle

Description

Allow for a consumer to waive the 24-hour cooling off period as required in a lease contract if they wish to take immediate possession of a leased vehicle.

Implications

Dealers will not be required to keep possession of a leased vehicle for 24 hours if the lessee wishes to take immediate possession and is willing to waive the cooling off period.

Rationale

While the cooling off period may provide protection for consumers in some instances, they should have an option to take immediate possession of a vehicle by making an informed choice to waive the cooling off period.

(f) Increase the length of time that motor dealers must keep business records from 2 years to 7 years

Description

Currently, section 20 of the Motor Dealer Act Regulation requires that motor dealers maintain records for 2 years from the date of a transaction. This change would require that dealers keep records for 7 years.

Implications

Dealers will be required to keep business records for 7 years from the date of a transaction.

Rationale

A longer retention period for records is required to assist in inspection and enforcement activities. The 7-year requirement is consistent with other business record keeping requirements such as requirements for tax records.

7. Changes regarding requirements to disclose material facts

(a) Increase threshold amount for disclosing vehicle damage to \$5000

Description

Change the threshold amount for disclosure of damage to a used vehicle in section 23(b)(ii) of the Motor Dealer Act Regulation from \$2000 to \$5000. The MDC will also recommend to government that this requirement be included in the *Motor Vehicle Act* so that it applies to private vehicle sales as well.

Implications

Dealers will be required to disclose that a used vehicle has sustained damage requiring repairs where those repairs for any one incident were worth \$5000 or more.

Rationale

The increase from \$2000 to \$5000 provides a more reasonable damage amount given the current cost of vehicles and repairs.

(b) Remove the requirement to disclose that a vehicle was previously leased

Description

Change the current requirement in section 23(c) of the Motor Dealer Act Regulation to disclose whether a vehicle has been used as lease or rental vehicle by removing the requirement to disclose that a vehicle was previously a lease vehicle. The requirement for rental vehicles will remain.

Implications

Dealers will no longer be required to disclose that a vehicle was previously a lease vehicle.

Rationale

The popularity of leasing as an alternative to purchasing a vehicle makes the requirement to disclose that a vehicle was previously a lease vehicle obsolete. It no longer serves a consumer protection purpose.

(c) Include additional material facts that must be disclosed

Description

Add the following to the material facts required to be disclosed under section 23 of the Motor Dealer Act Regulation:

- i. whether a vehicle has been previously sold as salvage or rebuilt
- ii. whether a vehicle has been previously registered in any jurisdiction other than British Columbia, and if so, which jurisdictions

- iii. whether or not the vehicle complies with the requirements of the *Motor Vehicle Act*
- iv. where applicable, that a vehicle is not suitable for transportation

Implications

Dealers must ensure that these additional material facts are disclosed where they apply.

Rationale

Adding these items to the requirements clarifies the importance of disclosure of these material facts and promotes consumer protection and confidence.

8. Changes to incorporate key provisions of the *Business Practices and Consumer Protection Act (BPCPA)*

In July of 2004, the BC government harmonized and updated several consumer protection laws by enacting the *Business Practices and Consumer Protection Act (BPCPA)*. The BPCPA and related legislation provides a modern and comprehensive regime of regulation and consumer protection tools.

Although the regulation of the industry remains under the *Motor Dealer Act*, section 8.1 of the *Motor Dealer Act* and section 29 of the *Motor Dealer Act Regulation* give the registrar of motor dealers the authority to act under the BPCPA in relation to deceptive or unconscionable acts or practices committed by licensees.

The changes outlined below will incorporate key provisions of the BPCPA into the *Motor Dealer Act*. These provisions will provide the registrar with additional enforcement options in relation to all matters regulated under the Act, and harmonize provisions in the Act and the BPCPA.

Note: The sections of the BPCPA referenced below are included in the appendix to this document.

(a) Add provisions describing the registrar's authority when issuing a licence – see BPCPA sections 146 and 147

Description

Clarify the authority of the registrar to refuse to issue or renew a licence, to suspend or cancel a licence, or set conditions on a licence. This will also provide the procedural requirements for taking such action, including provisions for a reconsideration of a licensing decision (see item 8 (d) below).

Implications

The circumstances under which the registrar might refuse or set conditions on a licence, and the procedural requirements for doing so will be outlined in the *Motor Dealer Act*.

Rationale

The current provisions in the *Motor Dealer Act* do not provide the clarity and detail included in the BPCPA.

(b) Add provisions for issuing compliance orders – see BPCPA section 155

Description

Allow inspectors and the registrar to issue compliance orders when licensees contravene the Act, as described in s. 155 of the BPCPA. Where necessary, the registrar may file the compliance order with the British Columbia Supreme Court, making it enforceable as an order of that court.

Implications

Licensees who contravene the Act or regulations may be served with a compliance order requiring specific remedial action.

Rationale

The ability to issue compliance orders provides a flexible and effective enforcement tool that can be tailored to individual circumstances.

(c) Add provisions to allow the registrar to impose administrative penalties – see BPCPA sections 164, 167 and 168

Description

Allow the registrar to impose a monetary administrative penalty on a licensee who contravenes the BPCPA, the *Motor Dealer Act* or regulations, a condition of license, or a compliance order. The maximum amounts for an administrative penalty will be \$100,000 for an individual and \$200,000 for a corporation.

Implications

The ability to impose an administrative penalty would provide the registrar with an additional enforcement option. In particular, an administrative penalty may be imposed where an offence under the Act has been committed, instead of prosecuting in the courts.

Rationale

In appropriate circumstances, the use of administrative penalties provides for a faster, less expensive and more flexible means of enforcement. It provides for a fair, timely hearing process that is less rigid and formal than court proceedings.

(d) Add provisions that provide a right to a reconsideration of a determination by the registrar – see BPCPA sections 180 - 182

Description

Provide procedures by which a licensee may request that the registrar reconsider a decision. The right to request a reconsideration will apply to decisions regarding licensing, compliance orders or administrative penalties.

In making the request, the licensee must indicate the nature of the error or other grounds to support reconsideration. The registrar then decides whether or not a reconsideration is warranted and proceeds accordingly.

Implications

Where a licensee believes that a decision of the registrar was wrongly made, the licensee will have the right to request that the registrar reconsider the decision.

Rationale

The right to reconsideration provides a form of appeal within the administrative process, which can be done quickly and efficiently.

(e) Change provisions on the service and delivery of documents – see BPCPA sections 183(2) and 184

Description

Adopt the service and delivery provisions in the BPCPA. These provisions provide more options and describe them in more detail than the current provisions in the *Motor Dealer Act*. It would include allowing for notices to be delivered by e-mail where a person has provided an e-mail address for delivery.

Implications

The options and requirements for service and delivery will be more clearly and consistently stated in the *Motor Dealer Act*. Licensees will have the option to receive notices from the registrar via e-mail.

Rationale

This change will ensure that the service and delivery provisions in the *Motor Dealer Act* are updated and consistent throughout the Act. Allowing delivery via e-mail provides a faster and cheaper option.

(f) Update the provisions on confidentiality – see BPCPA section 185

Description

This change will update the confidentiality provisions governing the registrar and Motor Dealer Council staff in section 29(1) of the *Motor Dealer Act* based on the comparable provision in section 185 of the BPCPA.

Implications

The confidentiality provisions in the Act will be more clear and consistent with other relevant legislation.

Rationale

The confidentiality provisions need to be updated.

(g) Change the limitation period for prosecuting an offence – see BPCPA section 193

Description

This change will update and clarify the limitation period in section 36 of the *Motor Dealer Act* for when an offence under the Act or regulations may be prosecuted. Currently the limitation period is 2 years from when the registrar became aware of the offence. The

limitation period to be adopted from the BPCPA is 2 years after the time when the subject matter of the proceedings arose.

Implications

The time allowed for prosecuting an offence will be more clear and definite.

Rationale

This change updates and clarifies the limitation period in the Act and provides for more uniform application of limitation periods in consumer protection legislation.

9. Housekeeping changes

The changes described in this section are not considered substantive, but are required to address inconsistencies, omissions or redundant provisions in the *Motor Dealer Act* and regulations.

(a) Remove provisions no longer required

Description

Remove the following items:

- i. The definition of “manufactured home” from the *Motor Dealer Act*. Manufactured homes are no longer covered under the Act.
- ii. The definition of “demonstration license” and section 9 of the Motor Dealer Act Regulation, which reads:

Where the certificate of registration of a motor dealer is suspended or cancelled he shall forthwith return his certificate of registration to the registrar and shall surrender to the Insurance Corporation of British Columbia any demonstration licences and corresponding number plates issued to him.

The disposition of demonstration licences is already covered under the *Motor Vehicle Act* and does not belong in the Motor Dealer Act Regulation.

- iii. Section 14(j) of the Motor Dealer Act Regulation, which exempts salespersons from the *Motor Dealer Act*. Salespersons are now covered under the Act and regulations.
- iv. Section 14(o) of the Motor Dealer Act Regulation, which exempts real estate agents in regard to the sale of manufactured homes from the *Motor Dealer Act*. This exemption no longer applies as manufactured homes are no longer covered under the *Motor Dealer Act*.
- v. Section 3(2) from the *Motor Dealer Act*, which reads:

Except as provided in section 13, a person must not advertise or in any way indicate that he or she is registered or licensed under this Act.

This section has no practical value and the subject matter is addressed in section 13 of the Act.

- vi. The word “past” from the phrase “past conduct” in section 5 of the *Motor Dealer Act*. Section 5 reads in part (underlining added):

If the financial responsibility or past conduct of an applicant or person registered...

The word “past” is confusing and does not add anything to the meaning of the section.

- vii. The words “serial number” from section 26(a) of the Motor Dealer Act Regulation, which reads in part (underlining added):

A motor dealer exhibiting or offering for sale a new motor vehicle shall affix to it in a clear and legible manner information concerning it as follows:

a) the serial number or vehicle identification number...

Serial number has the same meaning as vehicle identification number and is redundant.

(b) Clarify registrar’s duty to keep public records regarding salespersons

Description

Under section 2(2)(d) of the *Motor Dealer Act*, the registrar must:

maintain public records of terms or conditions imposed on a registered dealer under section 4(4).

This same duty should now apply in relation to salespersons registered under the Act and this section will be amended to include salespersons.

(c) Clarify wording regarding the voluntary cancellation of a licence

Description

Replace the words “motor dealer” with “licensee” and the words “may cancel” with “may request cancellation of” in section 8 of the Motor Dealer Act Regulation. Section 8 currently reads (underlining added):

A motor dealer may cancel his certificate of registration at any time by filing an application for voluntary cancellation and returning to the registrar the certificate of cancellation.

This change recognizes that others besides motor dealers are licensed under the Act, and clarifies the sole authority of the registrar to cancel a licence.

(d) Clarify the meaning of “Motor Dealer” to include “curbers”

Description

Bring into force the provision amending the definition of “Motor Dealer” in the *Motor Dealer Act* that was passed as part of the *Motor Dealer Amendment Act, 2004*. This provision reads:

Without limiting the definition of “motor dealer”, a person who carries on the activities described in paragraphs (a) to (c) of that definition in respect of 5 or more motor vehicles within a 12 month period is, subject to an exemption by regulation, deemed to be a motor dealer.

Historically, the definition of motor dealer included this provision in order to capture informal dealers or “curbers”. However, it was inadvertently left out of the definition when the Act was amended in 2003 (*Motor Dealer Amendment Act, 2003*). The

provision was restored in section 1(c) of the *Motor Dealer Amendment Act, 2004*, but it has not yet been brought into force.

(e) Clarify the process for a claimant to repay the compensation fund when otherwise compensated

Description

Rewrite section 20 (1) of the *Motor Dealer Act* in more clear and plain language.

Section 20 (1) of the *Motor Dealer Act* requires that claimants who have received money from the compensation repay the fund if they receive compensation from another source. Section 20 (1) currently reads:

If the fund pays a person's claim and the person receives something of value from some other source in payment of the loss that led to the payment from the fund, the person must repay to the fund money equal to the value of the thing received from the other source.

This change will make the obligations of a claimant to repay the fund more clear and understandable.

(f) Prohibit dealers from employing an unlicensed salesperson

Description

Currently, the Salesperson Licensing Regulation prohibits a person from acting as a salesperson unless they are registered. This change would also prohibit a dealer from employing anyone as a salesperson who is not licensed under the Act.

Dealers should be required to ensure that their staff is licensed. This requirement currently exists as a directive of the registrar and should be made part of the regulations.

Appendix

Excerpts from the current *Business Practices and Consumer Protection Act*

This appendix contains the sections of the current BPCPA referenced in the proposed changes noted in Part 8 of this document.

Note:

- references to the “director” in these excerpts would refer to the registrar in the context of the *Motor Dealer Act*.

Actions by director respecting licence

146 (1) The director may

- (a) refuse to issue or renew a licence,
- (b) suspend or cancel a licence, or
- (c) amend, impose or rescind conditions on a licence.

(2) Without limiting the authority of the director under subsection (1), the director may make a decision under subsection (1) if the applicant or licensee does any of the following:

- (a) contravenes this Act or the regulations;
- (b) fails to meet or no longer meets the minimum requirements for a licence as specified in the regulations;
- (c) contravenes a condition of a licence;
- (d) engages in a pattern of conduct that shows, in the director's opinion, that the person is unfit to have a licence;
- (e) is convicted of an offence under
 - (i) this Act or any other enactment, or
 - (ii) a law enacted by the government of Canada, another province of Canada or a foreign jurisdiction

for conduct that shows, in the director's opinion, that the person is unfit to have a licence.

(3) Without limiting the authority of the director under subsection (1), the director may make a decision under subsection (1) if the applicant or licensee is an employer, employee, officer, director or agent of a licensee against whom the director has made a decision under subsection (1).

(4) A licensee must immediately give a cancelled licence to the director.

Opportunity to be heard and reconsideration

147 (1) Before the director makes a decision under section 146 [*actions by the director respecting licence*], the director must give the applicant or licensee an opportunity to be heard.

(2) Despite subsection (1), if, in the director's opinion, the length of time required to give the applicant or licensee the opportunity to be heard would be prejudicial to the public interest, the director may make the decision before giving the applicant or licensee an opportunity to be heard.

(3) If the director makes the decision before giving the applicant or licensee an opportunity to be heard, the director must notify in writing the applicant or licensee of the decision and of the right of the applicant or licensee to request, within 30 days, an opportunity to be heard.

(4) The director must give the applicant or licensee an opportunity to be heard within 30 days from the date the director received the request referred to in subsection (3).

(5) The director must give the applicant or licensee written reasons for the decision.

(6) The decision may be reconsidered in accordance with Division 1 of Part 12 [*reconsiderations*].

Compliance orders

155 (1) After giving a person an opportunity to be heard, an inspector may order the person to comply with this Act and the regulations if satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.

(2) A compliance order must

(a) name the person in respect of whom the order is issued,

(b) describe the person's act or practice that is contravening, is about to contravene or has contravened this Act or the regulations,

- (c) identify the section of this Act or the regulations that is being contravened, is about to be contravened or has been contravened,
 - (d) be dated and signed by the inspector issuing the order, and
 - (e) inform the recipient that the director may file the compliance order with the Supreme Court and that a filed order is deemed to be an order of the Supreme Court.
- (3) In a compliance order, an inspector may order a person to stop engaging in or not engage in a specified act or practice.
- (4) The director may include one or more of the following orders in a compliance order:
- (a) that a person reimburse any money or return any other property or thing received to a consumer or a class of consumers;
 - (b) that a person compensate other persons or a class of persons who have suffered loss or damage as a result of a contravention of this Act or the regulations;
 - (c) that a person take specified action to remedy an act or practice by which the person is contravening, is about to contravene or has contravened this Act or the regulations;
 - (d) that a person reimburse to the director all or a portion of the actual costs of any inspection, including actual legal costs, incurred by the director for the inspection of that person in respect of the contravention referred to in the compliance order.
- (5) The inspector must serve a copy of the compliance order on the person named in the order.
- (6) If a compliance order is made against two or more persons, all the persons against whom the order is made are jointly and severally responsible for complying with the order and are jointly and severally liable for the payment of any amounts the persons are required to pay under the order.
- (7) A compliance order may be reconsidered in accordance with Division 1 of Part 12 [*reconsiderations*].
-

Administrative penalties

- 164** (1) After giving the person an opportunity to be heard, the director may impose an administrative penalty on the person if the person contravenes
- (a) a prescribed provision of this Act or the regulations,

- (b) a condition of a licence,
- (c) a compliance order,
- (d) a direct sales prohibition order,
- (e) a property freezing order, or
- (f) an undertaking.

(2) Before the director imposes an administrative penalty on a person, the director must consider the following:

- (a) previous enforcement actions for contraventions of a similar nature by the person;
- (b) the gravity and magnitude of the contravention;
- (c) the extent of the harm to others resulting from the contravention;
- (d) whether the contravention was repeated or continuous;
- (e) whether the contravention was deliberate;
- (f) any economic benefit derived by the person from the contravention;
- (g) the person's efforts to correct the contravention.

(3) If the director imposes an administrative penalty on a person, a prosecution for an offence under this Act for the same contravention may not be brought against the person.

(4) A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

(5) If a corporation contravenes

- (a) a prescribed provision of this Act or the regulations,
- (b) a condition of a licence,
- (c) a compliance order,
- (d) a direct sales prohibition order,
- (e) a property freezing order, or
- (f) an undertaking,

an officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention is also liable under this section, whether or not an administrative penalty is imposed on the corporation.

...

Due date of penalty

167 The person on whom an administrative penalty is imposed must pay the administrative penalty

- (a) within 30 days after the date on which the notice referred to in section 166 is served on the person, or
- (b) if the person requests a reconsideration, within 30 days after the date on which the decision of the director respecting the reconsideration is served on the person.

Enforcement of administrative penalty

168 (1) Subject to a reconsideration or the expiry of the period in which to request a reconsideration, an administrative penalty constitutes a debt payable by the person on whom the penalty is imposed.

(2) If a person fails to pay an administrative penalty as required under section 167, the director may file with the Supreme Court or Provincial Court a certified copy of the notice imposing the administrative penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of that court.

180 In this Division, "**determination**" means

- (a) a decision, order or ruling in respect of a matter that relates to a compensation fund,
- (b) a decision under section 146 [*actions by director respecting licence*],
- (c) a compliance order,
- (d) a direct sales prohibition order, or
- (e) a notice imposing an administrative penalty.

Reconsideration by director

181 (1) A person may request the director to reconsider a determination

- (a) within 30 days of receiving the later of
 - (i) the determination, and
 - (ii) any written reasons respecting the determination, or
 - (b) within the time period specified by the director, if the director is satisfied that
 - (i) special circumstances existed which precluded the filing of a request for reconsideration within the time period required in paragraph (a), and
 - (ii) an injustice would otherwise result.
- (2) The person must make the request in writing and must identify the error the person believes was made or the other grounds for which reconsideration is requested.
- (3) If the director decides to reconsider a determination,
- (a) the director must give notice to any person that the director considers will be affected by the reconsideration of the determination, and
 - (b) the determination is stayed unless the director orders that the determination is not stayed.

Powers of director on reconsideration

- 182** (1) If the director reconsiders a determination, the director
- (a) has all the powers and duties the director had with respect to the determination, and
 - (b) subject to subsection (2), may confirm, vary or cancel the determination.
- (2) The director may vary or cancel a determination referred to in paragraphs (a), (c) and (e) of the definition of "determination", only if the director is satisfied that new evidence has become available or has been discovered that
- (a) is substantial and material to the determination, and
 - (b) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.
- (3) If the director has delegated powers and duties respecting a determination referred to in paragraphs (b) and (d) of the definition of "determination", the director must not delegate the reconsideration of the determination to the same person.

- (4) If the director made a determination referred to in paragraph (b) or (d) of the definition of "determination", the director must delegate the reconsideration to one or more persons who did not participate in the determination.
- (5) The director must give written reasons for the director's decision in respect of the reconsideration to the person who made the request under section 181 (2) or a person given notice under section 181 (3).
- (6) For certainty, a decision made under this section may not be reconsidered.
-

How to give or serve documents generally

183 (1) This section does not apply to the following:

- (a) providing a distance sales contract under section 48 [*copy of distance sales contract*];
- (b) giving a notice of cancellation under Part 4 [*Consumer Contracts*] in accordance with section 54 [*how to give a notice of cancellation*];
- (c) giving a notice under section 77 [*notice of intention to accelerate payment*];
- (d) giving a notice under section 110 [*notice of denial of benefit or increase of cost of benefit*];
- (e) serving the director with a writ of summons or notice of claim under section 173 [*notice of director*].

(2) All documents that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a consumer, an individual who is the subject of a report, as defined in section 106 [*definitions respecting credit reporting*], or a debtor,
 - (i) by leaving a copy at that person's residence with an adult who apparently resides with that person,
 - (ii) by sending a copy by ordinary mail or registered mail to the address at which that person resides or to a forwarding address provided by that person,
 - (iii) by leaving a copy in a mail box or mail slot for the address at which that person resides, or

- (iv) by attaching a copy to a door or other conspicuous place at the address at which that person resides;
- (c) if the person is a supplier or a person not referred to in paragraph (b),
 - (i) by leaving a copy with an agent of that person,
 - (ii) by sending a copy by ordinary mail or registered mail to the address at which that person carries on business,
 - (iii) by sending a copy by electronic mail to the electronic mail address provided by that person,
 - (iv) by leaving a copy in a mail box or mail slot for the address at which that person carries on business, or
 - (v) by attaching a copy to a door or other conspicuous place at the address at which that person carries on business;
- (d) by transmitting a copy to a facsimile number provided as an address for service by the person;
- (e) by any other method of service prescribed.

When documents are considered to have been received

184 A document given or served in accordance with section 183 (2) is deemed to be received as follows:

- (a) if given or served by sending a copy by ordinary or registered mail, on the 5th day after it is mailed;
- (b) if given or served by sending a copy by electronic mail, on the 3rd day after it is sent;
- (c) if given or served by leaving a copy in a mail box or mail slot, on the 3rd day after it is left;
- (d) if given or served by attaching a copy to a door or other conspicuous place, on the 3rd day after it is attached;
- (e) if given or served by transmitting a copy by facsimile, on the 3rd day after it is transmitted;
- (f) if given or served by any other method of service prescribed under section 183 (2) (e), as prescribed.

Confidentiality

185 (1) A person who is engaged in the administration of this Act or the regulations and who has custody of, access to or control over information or records under this Act must not disclose the information or records to any other person except

- (a) if disclosure is for the purposes of the administration of this Act or the regulations,
- (b) with the consent of the person to whom the information or record relates,
- (c) in court proceedings related to this Act, or other similar enactments of British Columbia, another province or Canada,
- (d) if an enactment of British Columbia, another province or Canada requires the disclosure,
- (e) to the person's counsel,
- (f) to a law enforcement agency in Canada, or
- (g) under an agreement with the government.

(2) The person referred to in subsection (1) is not, except in a proceeding under this Act, compellable to disclose or give evidence about information or records the person has custody of, access to or control over.

Limitation period

193 The time limit for laying an information for an offence under this Act is 2 years after the time when the subject matter of the proceedings arose.
