

Regulation of Motor Dealers: A Discussion Paper of Issues and Possible Regulations in Saskatchewan

| | |
|---|----|
| Introduction – Purpose of Discussion Paper | 2 |
| Summary of Select Provisions of The Motor Dealers Act and The Consumer Protection and Business Practices Act | 3 |
| Interpretation | 3 |
| Licences | 3 |
| Forfeiture of Bond | 4 |
| Appeal from Director’s Decision | 4 |
| Investigations | 5 |
| Miscellaneous | 5 |
| Offences and Penalties | 6 |
| Issues for discussion | 6 |
| Disclosure | 6 |
| Licensing | 8 |
| Contract of lease or sale | 9 |
| Examination of Salespersons | 11 |
| Advertising | 11 |
| Low cost vehicles | 12 |
| Responses | 13 |
| Consolidation of Discussion Questions | 14 |

Saskatchewan Ministry of Justice
Financial and Consumer Affairs Authority of Saskatchewan
June 2013

Regulation of Motor Dealers: A Discussion Paper of Issues and Possible Regulations in Saskatchewan

Introduction – Purpose of Discussion Paper

[*The Consumer Protection and Business Practices Act*](#) was passed by the Saskatchewan Legislative Assembly in spring 2013. Part VII of the legislation permits regulations dealing with a variety of aspects of licensing of businesses in Saskatchewan. One of those business types is motor dealers. This legislation will come into effect as the regulations are enacted.

The purpose of this discussion paper is to raise issues that may be addressed in the regulations, and determine stakeholders views on these issues.

The Motor Dealers Act in Saskatchewan was passed in 1966, and has had infrequent amendments since that date.¹ It is appropriate that a thorough review is done before regulations are passed.

A number of issues have been identified internally that will be addressed in the regulations. They include the following:

- A mandatory criminal record check for a sole proprietor, any partner in a motor dealership, or any director or officer of the corporation that is a motor dealer;
- Giving the Director the authority to attach conditions to a licence on reinstatement, imposed at the time that the licence is suspended; and
- Expanding the application of the legislation to lease arrangements as well as sales.

The purpose of this Discussion Paper is to raise other issues, and ask for feedback from a wide variety of individuals and groups that have an interest in the operation of the regulations. If, as a result of feedback, it is determined that there are issues that should be addressed, the government will consider them in its regulations.

Some key issues are:

- The definition of motor dealer - should it include brokers, lease operators, sale display lots, bailiff or bank sales or salvage sales?
- Whether there should be advertising rules;
- Whether standardized sales contracts are a good idea;
- Warranty protection on low cost vehicles.

¹ Amended 1972, c. 80, to require dealers to include their licence # in advertisements; 1973, c. 64, to add grounds for forfeiting a bond; 1973, c. 65, to require an applicant to be notified of a refusal to issue a licence; 1973-74, c. 66, to change the term of licences to 5 years; 1976, c. 37, to make housekeeping amendments; 1983, c. 82, to make housekeeping amendments; 1984-85-86, c. 79, to remove the requirement for salespersons to be licensed; 2000, c. 53, to enact requirement for bond forfeiture to be consistent with *The Consumer Protection Act*; and 2004, c. T-18.1, to make consequential amendments.

Summary of Select Provisions of *The Motor Dealers Act* and *The Consumer Protection and Business Practices Act*

Interpretation

(a) “**dealer**” means a person carrying on the business of selling or offering for sale, or soliciting orders for the future delivery of, motor vehicles;

(e) “**sale**” includes a disposition or acquisition of a motor vehicle by exchange, trade or consignment;

Note that *The Motor Dealers Act* (MDA) is administered by a “registrar;” *The Consumer Protection and Business Practices Act* (CPBPA) will be administered by a “Director.” “Director” will be used in this document.

Licences

Requirement for licence - sections 3 and 4 of the MDA and section 56 of the CPBPA require dealers to be licensed, and prohibits anyone from holding themselves out as a motor dealer without a licence.

Application for licence - sections 5 and 6 of the MDA and section 58 of the CPBPA set out minimal information to be provided to be licensed – a form provided by the Director, the fee, and an address for service in Saskatchewan.

Granting of licence - section 11 of the MDA and section 61 of the CPBPA provide the Director with broad discretion to grant or refuse to grant a licence, and section 12 of the MDA and section 61 of the CPBPA allow the Director to impose and alter terms and conditions for the licence.

Place of business - section 13 of the MDA requires the dealer to conduct his or her business from a place “satisfactory to the Director” to qualify for a licence. Section 74 of the CPBPA allows regulations to prescribe the type and condition of premises.

Length and cost of licence - the licences are 5 years in length (section 14 of the MDA). The current fee is \$625 for motor dealers in a city or within 5 kilometers of a city, and \$400 for any other place.² The government plans to increase the fee to \$1000 for all licencees effective January 1, 2014.

² The fees have increased from \$30 in 1981, to \$150/\$50 in 1984, to \$500/\$250 in 1987, to the current rate in 1991.

Suspension and cancellation of licences – section 15 of the MDA allows the Director to suspend or cancel a licence, including for violating section 114 of *The Traffic Safety Act*³, material misstatements in licence applications, misrepresentation, fraud or dishonesty, or “incompetency or untrustworthiness to carry on the business of a dealer.” Section 65 of the CPBPA allows the Director to suspend or cancel a licence for the same reasons that the Director might have refused to issue a licence, for failure to comply with the Act or regulations, or if the dealer’s circumstances change.

Bond or other financial security – under section 18 of the MDA and section 59 of the CPBPA, the Director can require a financial security in any amount before granting a licence.⁴ Regulations under the CPBPA can require financial security in every case.

Hearing – section 19 of the MDA and section 71 of the CPBPA allow any person who has been denied a licence, whose licence has terms and conditions, or who is required to have a bond, to ask for a hearing before the Director to challenge the decision of the Director.

Forfeiture of Bond

Section 20 of the MDA provides standard provisions for forfeiture of a bond, including, among other things, forfeiture for the commission of an offence under the Act or regulations, or “an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the *Criminal Code*.”⁵ The CPBPA provides that the regulations will prescribe the terms and conditions under which financial security is to be forfeited and the procedures to be followed.

Appeal from Director’s Decision

Section 22 of the MDA and section 85 of the CPBPA allow a person who is dissatisfied with the decision of the Director to appeal to the Court of Queen’s Bench. The court is permitted to make any appropriate order respecting the decision of the Director, and to award costs to either party.

³Section 114 reads: “No person engaged in the business of buying, selling or exchanging vehicles shall sell or give in exchange a vehicle that the person to whom it is sold or given intends to drive on a highway if the vehicle is not equipped in accordance with this Act and the regulations.” *The Vehicle Equipment Regulations, 1987*, set out the minimum requirements for equipment on a vehicle that is to be used on a highway, including such items as brakes, steering, lights, mirrors and bumpers.

⁴The Director generally requires bonds of \$10,000 for restricted licences (motorcycle and snowmobile dealers) and \$20,000 for full licences (car/truck/motor home (new or used) dealers) per location.

⁵Note that the Court of Queen’s Bench has ruled that a bond cannot be forfeited without some actual loss to a consumer.

Investigations

Sections 23 and 24 of the MDA and section 78 of the CPBPA allow the Director to investigate any matter that is considered necessary, and to demand to see all books and records of the motor dealer.

Miscellaneous

Records

Section 25 of the MDA requires the motor dealer to keep records of every vehicle sold, as prescribed in the regulations. The regulations require the following records:

- “(a) in the case of a motor vehicle purchased or acquired by the dealer:
 - (i) the name and address of the person from whom the motor vehicle was purchased or acquired;
 - (ii) the date on which the motor vehicle was purchased or acquired; and
 - (iii) the price paid for the motor vehicle or, in the case of a trade-in, the allowance made; and

- (b) in the case of a motor vehicle sold by the dealer:
 - (i) the name and address of the purchaser;
 - (ii) an accurate description of the motor vehicle, including its year of manufacture, serial number, body type and details of extra equipment;
 - (iii) the sale price;
 - (iv) the terms or method of payment;
 - (v) where another motor vehicle is accepted as a trade-in, a description of that vehicle, including its year of manufacture, serial number, body type and amount of trade-in allowance; and
 - (vi) the name of the salesman.”

Section 73 of the CPBPA requires the licensee to keep the following records and to retain them for the period prescribed in the regulations:

- (a) complete and accurate records of the licensee’s operations that include the prescribed information;

- (b) complete and accurate records respecting all transactions that the licensee has offered, arranged, provided or entered into;

- (c) any other prescribed records.

Form of contract

Section 26 of the MDA requires the motor dealer to use a contract as prescribed by the regulations. The regulations permit the Director to approve the form of the contract. Section 74 of the CPBPA permits regulations to outline the information to be contained in agreements used by dealers in their dealings with the public.

Advertising

Section 29 of the MDA requires a motor dealer to list its licence number in all advertisements. Section 74 of the CPBPA allows regulations respecting the manner of informing members of the public of any sale or dealing with goods and services.

Exemptions

Section 31 of the MDA exempts persons selling vehicles to licensed dealers from being licensed themselves. Section 113 of the CPBPA allows regulations exempting any person from the requirements of the Act.

Offences and Penalties

Under section 34 of the MDA:

- the fine for operating without a licence is from \$25 to \$100 for each offence;
- the fine for failing to comply with terms and conditions of a licence is from \$1000 to \$5000;
- the fine for any other offence is from \$25 to \$500.

Under section 108 of the CPBPA:

- the fine for contravening the Act is up to \$5,000 for a first offence (\$100,000 for a corporation) and up to \$10,000 (\$500,000 for a corporation) for a second or subsequent offence. Individuals can also be imprisoned for not more than one year.

Issues for discussion

Disclosure

Modern Canadian consumer protection legislation contains detailed requirements for disclosure to the consumer about the product and the agreement that will assist the consumer in making an informed decision about the purchase or lease of the vehicle. Examples of requirements for disclosure in other Canadian and some American jurisdictions include:

- Vehicle history:
 - Repair history, if known to the dealer;
 - Accident history, which is readily available from Saskatchewan Government Insurance; ⁶
 - Vehicle inspection reports, if any;
 - Whether the vehicle has been written off in any other jurisdiction or declared a “lemon” under the laws of any other jurisdiction if the dealer knew or should have known this information;
 - Whether a used vehicle has been acquired from an out of province source; and
 - Whether the vehicle has ever been used as a taxi, police or other emergency vehicle, or was a lease or rental vehicle or demonstrator model.

- Odometer readings - a statement from the dealer about the accuracy of the odometer⁷.

- Documentation fees and other charges related to the purchase of the vehicle - this would disclose to the purchaser, prior to the final price being negotiated, the total amount to be paid for the vehicle including administration, registration, finance, lien checks, vehicle reports, etching programs, theft protection or any other fees that are to be added to the final price.

- The name of the lender financing the vehicle⁸.

- In the case of an auction, consignment sale or display lot where the car is sold on behalf of a consigner or other third party, the name of the consigner.

Discussion Questions

1. Should a dealer be required to disclose the following items to a purchaser or prospective purchaser? Why or why not?

- Repair history;
- Accident history;
- Inspection reports, if any;
- Whether the vehicle has been written off in any jurisdiction or declared a “lemon” under the laws of any other jurisdiction if the dealer knew or should have known this information;
- Whether a used vehicle has been acquired from an out of province source;
- Whether the vehicle has been used as a taxi, police or other emergency vehicle, or was a lease or rental vehicle or demonstrator model;

⁶ <http://www.sgi.sk.ca/vin/index.html>

⁷ For instance, if the odometer has been replaced and it was not possible to restore the odometer to the correct reading, what the reading was at the time that the odometer was replaced.

⁸ If the dealer is financing the vehicle itself instead of using a finance company, this information might be relevant to some consumers.

- Odometer readings, along with a statement from the dealer about the accuracy of the odometer;
 - All charges and fees, except taxes, including documentation fees prior to the final price being negotiated;
 - The name of the lender financing the vehicle, if any; and
 - In the case of an auction, consignment sale or display lot where the car is sold on behalf of a consigner or other third party, the name of the consigner.
2. **What potential issues, if any, arise for the motor dealer in being required to disclose any of them?**
 3. **Is there anything else that should be disclosed to consumers as part of the transaction?**
 4. **If disclosure is required, when should the disclosure be made? When a consumer expresses interest in a vehicle, when the purchaser makes a decision to purchase a vehicle, or as part of the contract of sale? Please explain your reasons.**

Licensing

Under the CPBPA a motor dealer will be required to be licensed. The following issues have arisen with respect to the licensing provisions under the MDA:

- One licence is required for each motor dealer, regardless of the number of locations that the motor dealer operates. Salespersons do not currently require a licence. Several provinces and other consumer protection legislation require separate licences for each location, and for salespersons.
- The current licensing provisions require the motor dealer to have a physical location in Saskatchewan, which is a requirement that cannot be met by many internet sales sites. Out of province and out of country “dealers” sell vehicles to residents of Saskatchewan through the internet, but as they are not licensed in Saskatchewan, the purchaser does not have the protections available under either the legislation.
- Pawn shops that sell vehicles, vehicle display lots, brokers, bailiffs, salvage dealers and consignment sales dealers fall under the definition of “motor dealer” in the Act. However, they do not necessarily meet the requirements of lot size, signage, office and hours of operation that are expected by the Director.

Discussion Questions

5. **What would be the effect of requiring separate licences for each location of a motor dealer?**

6. **Would there be issues with licensing salespersons or requiring them to be registered under the Act?**
7. **Should commercial publications and internet sites selling vehicles to Saskatchewan consumers be subject to regulation such as bonding requirements to reduce the loss to a consumer arising from fraudulent vehicle advertising in such publications or sites?**
8. **Should pawn shops that sell vehicles, vehicle display lots, bailiffs, consignment sales dealers and others mentioned above be licensed? If so should there be different fees or lot requirements?**

Contract of lease or sale

Currently, the motor dealer must provide the purchaser with a contract that is approved by the Director. The Director has, by policy, established the form of contract, but it is not legislated. The registrar requires the contract to have the name, mailing address and physical address of the dealership if different from mailing address (land description if there is no address), telephone number and fax number, if applicable, of the dealership on the front. Some jurisdictions prescribe the elements that must be contained in the contract. Some examples include:

- The names and addresses of the purchaser and vendor;
- The date of the sale;
- The make, model and year of the vehicle;
- The vehicle identification number (VIN);
- Particulars of extra equipment or accessories;
- Odometer readings, along with a statement from the dealer about the accuracy of the odometer;
- Price;
- Taxes;
- Down payment or deposit;
- Any other charges for which the purchaser is responsible; and
- The total price of the vehicle to be paid by the purchaser.

The Director currently forbids terms in contracts that purport to negate the statutory warranties under the Consumer Products Warranties provisions (Part III) of *The Consumer Protection Act*, including statements such as “as is” or “no warranty implied, written or stated.”

As well, consideration will be given to additional elements that must be in an auction sale contract and consignment sale contract between a consignor and consignee, such as:

- The full name, address and signature of the auctioneer, consignor and the consignee;

- The licence plate number and confirmation that the vehicle will remain registered until the vehicle is sold;
- Consignment terms;
- An estimate of the sale price.

Discussion Questions

9. If Saskatchewan legislates the minimum elements of a contract for the sale or lease of a vehicle, which of the following elements should be required:

- The names and addresses of the purchaser and vendor;
- The date of the sale;
- The make, model and year of the vehicle;
- The vehicle identification number (VIN);
- Particulars of extra equipment or accessories;
- Odometer readings, along with a statement from the dealer about the accuracy of the odometer;
- Price;
- Taxes;
- Down payment or deposit;
- Any other charges for which the purchaser is responsible; and
- The total price of the vehicle to be paid by the purchaser.

Are there other elements that should be included?

10. Should auction sales contracts and consignment sales contracts be separately regulated? If so, what elements should be contained in them?

- The full name, address and signature of the auctioneer, consignor and the consignee;
- The licence plate number and confirmation that the vehicle will remain registered until the vehicle is sold;
- Consignment terms;
- An estimate of the sale price.

Examination of Salespersons

Some jurisdictions have specific training requirements for salespersons, and many industry associations offer such training. For instance, in Manitoba, both salespersons and dealers are required to pass a knowledge test; in British Columbia there are two levels of salesperson certification courses. In Alberta, applicants must meet educational requirements established by the Director.

Discussion Question

11. Should a vehicle salesperson be required to pass a knowledge examination administered by an industry association?

Advertising

Saskatchewan's current legislation requires that an advertisement for a vehicle by a motor dealer in any newspaper or other "printed" publication must include the name and address of the dealer and the dealer's licence number. Other Canadian jurisdictions have extensive rules about advertising of vehicles for sale by a motor dealer, including advertising codes of conduct.

Some typical advertising rules include requirements:

- To state whether a picture in an advertisement is the actual vehicle that is for sale;
- To disclose if a vehicle has been used as a taxi, police vehicle, other emergency vehicle;
- That any representation as to condition and price must be true and verifiable;
- To include all other charges except taxes in the listed price, provided that the advertisement discloses that taxes are extra;
- To disclose if the vehicle is a used vehicle when it is the current year or previous year model; and
- If there are a limited number of vehicles available at that price, the number of vehicles available.

Discussion Questions

12. Should a dealer be required to list his or her licence number in advertisements? Why or why not?

13. Should additional advertising rules be legislated? Why or why not? If so, what should they be?

Low cost vehicles

Anecdotal evidence exists that some Saskatchewan residents have purchased vehicles from dealers for low prices that were not roadworthy or that failed to meet basic requirements. Under *The Consumer Protection Act*, the purchaser is entitled to:

- Clear title to the vehicle - there should be no liens against it;
- A vehicle of acceptable quality, depending on the price and whether or not defects were obvious or pointed out beforehand;
- A vehicle that is fit for a specific purpose provided the consumer has advised the dealer of the purpose; and
- A vehicle that is durable for a reasonable period of time after the purchase. Parts and repair facilities must be available for a reasonable period of time (not necessarily within Saskatchewan).

A purchaser is entitled to have a vehicle that does not meet these conditions repaired without charge, or to return the vehicle for a refund. Sometimes this might require the purchaser to take the dealer to court to enforce these rights.

Saskatchewan Government Insurance has a vehicle inspection program, but not all vehicles are required to be inspected before being sold.⁹

Some possible additional protections for purchasers of low-cost vehicles from dealers include:

- Requiring vehicles that are sold for less than a certain amount (e.g., \$2,000) or that have odometer readings higher than a certain value (e.g., 200,000 km.) to be inspected under SGI's Vehicle Inspection Program (note that section 114 of *The Traffic Safety Act* prohibits a dealer from selling a vehicle that does not pass inspection);
- Providing limited warranties permitting the return of the vehicle for a full refund if it breaks down within a certain time after the purchase (as has been done in Quebec), for example, 30 days for a vehicle worth less than \$2,000 or with more than 200,000 kilometres.

⁹ The vehicles that must be inspected are:

- Any used vehicles most recently titled, licensed or registered in another jurisdiction;
 - Any total loss passenger vehicles that have sustained damage or corroded so it may have harmed or weakened the vehicle's structural integrity;
 - Total loss vehicles imported from another jurisdiction;
 - Stolen and recovered vehicles that have not sustained sufficient damage to be a total loss if it is suspected the vehicle is either structurally or mechanically unsafe.
- The average cost of a vehicle inspection is approximately \$150.

Discussion Questions:

- 14. Should Saskatchewan provide additional protections for purchasers of low-priced vehicles? Why or why not?**
- 15. If so, what protection should be provided?**

Responses

Please submit your responses to the discussion questions by September 30, 2013 to Mary Ellen Wellsch by email to Maryellen.Wellsch@gov.sk.ca or by mail or fax to:

Mary Ellen Wellsch
Senior Crown Counsel
Legislative Services Branch
Saskatchewan Ministry of Justice
800 - 1874 Scarth Street
REGINA SK S4P 4B3
Fax: (306)787-9111

The Motor Dealers Act can be accessed at <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/M22.pdf>.

The Consumer Protection and Business Practices Act can be accessed at: <http://docs.legassembly.sk.ca/legdocs/Bills/27L2S/Bill27-55.pdf>.

Regulation of Motor Dealers: A Discussion Paper of Issues and Possible Regulations in Saskatchewan

Consolidation of Discussion Questions

Disclosure

1. Should a dealer be required to disclose any of the following items to a purchaser or prospective purchaser?

Repair History Yes No

Please Explain

Accident History Yes No

Please Explain

Inspection reports, if any. Yes No

Please Explain

Whether the vehicle has been declared to be a "lemon" under the laws of any other jurisdiction. Yes No

Please Explain

Whether a used vehicle has been acquired from an out of province source. Yes No

Please Explain

Whether the vehicle has been used as a taxi, police or other emergency vehicle, or was a lease or rental vehicle or demonstrator model.

Yes No

Please Explain

Odometer readings, along with a statement from the dealer about the accuracy of the odometer. Yes No

Please Explain

All charges and fees, except taxes, including documentation fees. Yes No

Please Explain

The name of the lender financing the vehicle, if any. Yes No

Please Explain

2. What potential issues, if any, arise for the motor dealer in being required to disclose any of the above?

3. Is there anything else that should be disclosed to consumers as part of the transaction?

4. If disclosure is required, when should the disclosure be made?

When a consumer expresses interest in a vehicle. Yes No

Please Explain

When the consumer makes a decision to purchase a vehicle. Yes No

Please Explain

As part of the contract of sale. Yes No

Please Explain

Licensing

5. What would be the effect of requiring separate licences for each location of a motor dealer?

6. Would there be issues with licensing salespersons or requiring them to be registered under the Act?

7. Should commercial publications and internet sites selling vehicles to Saskatchewan consumers be subject to regulation such as bonding requirements to reduce the loss to a consumer arising from fraudulent vehicle advertising in such publications or sites? Yes No

8. Should pawn shops that sell vehicles, vehicle display lots, bailiffs, consignment sales dealers and others mentioned above be licensed? Yes No

If yes, should there be different fees or lot requirements? Yes No

Contract of Lease or Sale

9. If Saskatchewan legislates the minimum elements of a contract for the sale or lease of a vehicle, which of the following elements should be required:

- the names and addresses of the purchaser and vendor
- the date of the sale
- the make, model and year of the vehicle
- the vehicle identification number (VIN)
- particulars of extra equipment or accessories
- odometer readings, along with a statement from the dealer about the accuracy of the odometer
- price
- taxes
- down payment or deposit
- any other charges for which the purchaser is responsible
- the total price of the vehicle to be paid by the purchaser
- other

10. Should auction sales contracts and consignment sales contracts be separately regulated? Yes No

If yes, what elements should be contained in them?

- The full name, address and signature of the auctioneer, consignor and the consignee.
- The licence plate number and confirmation that the vehicle will remain registered until the vehicle is sold.

If yes, what terms?

- An estimate of the sale price
- The name of the consignor

Examination of Salespersons

11. Should a vehicle salesperson be required to pass a knowledge examination administered by the industry association?

Yes No

Advertising

12. Should a dealer be required to list his or her licence number in advertisements? Yes No

If yes, what should the rules be?

If no, please explain.

13. Should additional advertising rules be legislated? Yes No

If yes, what should the rules be?

If no, please explain.

Low-cost Vehicles

14. Should Saskatchewan provide additional protections for purchasers of low-priced vehicles? Yes No

If yes, what protections should be provided?

If no, please explain.

Additional Comments or Suggestions

Do you have any additional comments or suggestions for regulations respecting motor dealers or the administration of consumer protection in the area of motor dealers?

Confidentiality - Please select one

- I understand that my response is a public document
- Please keep my name confidential
- Please keep my entire response confidential

Submit

Name

Organization

Telephone Email