CADA’s Official Position on Bill S-2

An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act

LEGISLATIVE UPDATE:

New legislation going through Parliament, Bill S-2 “An Act to amend the Motor Vehicle Safety Act”, would give the Minister of Transportation new powers with respect to defective and non-compliant vehicles and equipment. The Canadian Automobile Dealers Association (CADA) supports this legislation.

Similar legislation already exists in the United States through the National Highway Traffic Safety Administration and bill S-2 in Canada, would grant the Minister of Transport the authority to order companies to correct a defect or a non-compliance and enforce a penalty structure for offences.

The biggest difference between what is being proposed in Canada versus what already exists in the U.S. is that in the U.S., there are provisions to ensure that dealers receive compensation in similar circumstances. This means:

- an obligation of the manufacture to either repurchase vehicles subject to defect recalls or to provide a remedy for dealers to implement immediately;
- manufacturers must also compensate dealers with an additional 1% of the price they paid for such vehicles, per month, prorated from the receipt of the notice until the vehicle is repurchased or the remedy is implemented; and
- compensation for parts and labour associated with the remedy.

WHAT DEALERS ARE ADVOCATING FOR:

Dealers welcome this new legislation in Canada but urge Parliament to give auto dealers in Canada the same benefits that are afforded to U.S. auto dealers.

It is unfair for auto dealers to take a loss in profits and to have vehicles depreciating in their lot when the problem lies with the manufacturer.

Automakers consistently and rightfully seek to harmonize with American automotive legislation and regulations. Harmonization in this case makes sense and is fair to dealers and consumers.

CADA’S PROPOSED CHANGES TO S-2:

Additional Definitions
“dealer” means a person selling and distributing a new vehicle or equipment obtained directly from a company to another person who in good faith purchases the vehicle or equipment other than for resale.
“Company’s Notice of Defect” means a notice that a company shall provide pursuant to section 10 (1).

“Company’s Notice of Non-Compliance” means a notice that a company shall provide pursuant to section 10.1 (1).

“Minister’s Order to Correct” means an order that the Minister may order pursuant to section 10.5.

Technical Change

In S-2, 10.51 should be changed to 10.5(1).

Additional Proposal

Actions Required of Companies

10.5 (2) If, before the dealer sells a new vehicle or equipment, the company issues a Company’s Notice of Defect or a Company’s Notice of Non-Compliance or a Minister issues the Minister’s Order to Correct, the company immediately shall either

(a) repurchase the impacted vehicle or equipment at the price paid by the dealer, plus transportation charges and reasonable reimbursement of at least one percent a month of the price paid prorated from the earlier of the date of (i) a Company’s Notice of Defect or (ii) a Company’s Notice of Non-Compliance or (iii) the Minister’s Order to Correct, to the date of repurchase; or

(b) provide to the dealer at the company’s own expense, the part or equipment needed to make the vehicle comply with the applicable vehicle safety standards prescribed under this Act or correct the defect.

Dealer Installation

10.5 (3) If the company elects to follow paragraph 10.5(2)(b), the dealer shall install the part or equipment supplied by the company with reasonable diligence after it is received. The company shall reimburse the dealer for the reasonable value of the installation and a reasonable reimbursement of at least one percent a month of the company’s selling price prorated from the earlier of the date of (i) a Company’s Notice of Defect or (ii) a Company’s Notice of Non-Compliance or (iii) the Minister’s Order to Correct, to the date the vehicle complies with applicable vehicle safety standards prescribed under this Act or the defect is corrected.

Establishing Amount Due and Civil Actions

10.5 (4) If the company and the dealer do not agree on any of the amounts payable in paragraphs 10.5(2)(a) or 10.5(3), or if the company refuses to comply with paragraphs 10.5(2) or 10.5(3), the dealer may bring a civil action in a Superior Court in the province in which the dealer is located to determine the dealer’s rights under 10.5(2) or 10.5(3), as applicable, and to recover damages, court costs and reasonable legal fees.
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