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BILLS DIGEST

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Motor Vehicle Sales Amendment Bill 2009 (2009 No 39-2)

Date of Introduction:	26 May 2009
Portfolio:	Consumer Affairs
Select Committee:	Commerce
Date report presented:	15 December 2009
Published: 16 December 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of the Bill is to amend the Motor Vehicle Sales Act 2003 (the Act) " ... to improve its effective operation"¹.

The Bill as introduced is described in [Bills Digest No 1690](#).

Main changes to the Bill

Particulars about used motor vehicles must be displayed

The Select Committee has recommended that it be made clear that a motor vehicle trader who offers or displays a used motor vehicle for sale, or causes or permits a used motor vehicle to be offered or displayed for sale, must ensure that a notice containing certain particulars is attached to the vehicle in

¹ Motor Vehicle Sales Amendment Bill, 2009 No 39-1, Explanatory note, General policy statement, p. 1.

a prominent position. This notice contains a statement setting out the effect of Section 58 of the Personal Property Securities Act 1999 (relating to whether or not the buyer or lessee of a motor vehicle who acquired the motor vehicle for value takes the motor vehicle free of any security interest in that motor vehicle).

The Select Committee has further recommended that it be stated in the Bill that where a motor vehicle is offered or displayed for sale by a motor vehicle trader through a "car market operator's facility"² (as referred to in paragraph (a)(ii) of the definition of car market operator in Section 6(1) of the Act - i.e. a trader on the internet), the motor vehicle trader complies with the obligation to display such a notice if that notice is readily accessible from the place where the motor vehicle is offered or displayed for sale and the place through which, or by means of which, the contract for sale may be completed (*Part 1, Clause 7, substituting New Section 14; cf. Section 15(1) of the Act*).

Comment

These amendments are made " ... to distinguish between internet advertisements that offer the ability to enter into a contract to buy the vehicle on line, and therefore should display a consumer information notice, and advertisements that are effectively classified advertisements, for which the provision of a consumer information notice would be an unnecessary and onerous requirement³.

Statutory declaration for new overseas directors

The Bill as introduced imposes an obligation on motor vehicle traders that are companies to notify the Registrar if a new person becomes involved in the management of the company.

The Select Committee has recommended that new overseas directors must certify that they are not disqualified from registration in their own right. No more than three directors may take advantage of this provision at any time (*Part 1, Clause 12, New Section 40A, inserting new subsections (4) and (5)*).

Jurisdiction of the Motor Vehicle Disputes Tribunal

The Select Committee has recommended that the Motor Vehicle Disputes Tribunal be given the ability to hear claims under the Contractual Remedies Act 1979 (*Part 1, New Clause 15A, amending Section 89(1)(a) and (b) of the Act*).

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² The term "car market operator" is defined in Section 6(1) of the Act as a person:

" (i) who carries on the business of providing any premises or place for a market for the sale by other persons of used motor vehicles (whether or not the vehicles are subject to a bailment to the operator); or

(ii) who operates any facility (for example, an Internet web page) for the primary purpose of facilitating the sale of used motor vehicles (which sale is completed through, or by means of, that facility)".

³ Motor Vehicle Sales Amendment Bill, 2009 No 39-2, As reported from the Commerce Committee, Commentary, pp. 1 and 2.