

1988 BILL 227

Third Session, 21st Legislature, 37 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 227

MOTOR DEALER ACT

MR. HYLAND

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 227
Mr. Hyland

BILL 227

1988

MOTOR DEALER ACT

(Assented to , 1988)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "business premises" does not include premises or part of premises occupied as a residence;
- (b) "court" means Provincial Court;
- (c) "Minister" means the Minister of Consumer and Corporate Affairs;
- (d) "motor dealer" means a person who, in the course of business,
 - (i) engages in the sale or exchange of motor vehicles, whether for his own account or for the account of another person, or who holds himself out as engaging in the sale or exchange of motor vehicles,
 - (ii) advertises, exhibits or offers motor vehicles for sale or exchange by him,
 - (iii) with or without remuneration, acts as a motor vehicle broker or, as an agent, sells motor vehicles on commission, and

(iv) includes a person who carries on any of the activities described above in respect of at least 5 motor vehicles within a 12-month period,

but does not include a person exempted by regulation;

(e) "motor vehicle" means a motor vehicle as defined in the Motor Vehicle Administration Act, but does not include a vehicle exempted the regulations;

(f) "registered" means registered under this Act;

(g) "Registrar" means the Registrar of Motor Dealers appointed under section 2, and includes a person authorized in writing by the Registrar to perform any of his duties;

(h) "sale" means a lease, exchange or other disposition or supply of a motor vehicle to an individual primarily for his personal or family use.

Registrar

2(1) The Minister shall appoint a Registrar of Motor Dealers.

(2) The Registrar shall be appointed from a list of nominees supplied to the Minister by the Motor Dealers' Association of Alberta.

(3) The Registrar shall

(a) establish a registry system;

(b) under the direction of the Minister, exercise the powers and perform the duties conferred or imposed on him under this Act and the regulations;

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

(4) The Registrar, on the direction of the Minister, may conduct research, hold public hearings, make inquiries, conduct tests, publish studies and inform consumers and motor dealers respecting any aspect of the sale and servicing of motor vehicles.

Registration

3 No person shall carry on business as a motor dealer

(a) unless he

(i) is registered,

(ii) has furnished the prescribed security satisfactory to the Registrar,

(iii) has paid the prescribed annual renewal fee,

(iv) maintains motor vehicle repair facilities or files with the Registrar a service contract providing for motor vehicle repair facilities satisfactory to the Registrar,

(v) maintains a sign on the business premises identifying the registrant and the premises in the prescribed manner, and

(iv) maintains business premises that are, in the opinion of the Registrar, sufficient for the purpose of displaying motor vehicles,

(b) elsewhere than at or from his business premises, and

(c) other than in his registered name,

and, except as provided in section 13, no person shall advertise or in any way indicate that he is registered or licensed under this Act.

Application for registration

4(1) Every application for registration shall be made in the prescribed form to the Registrar and be accompanied by the prescribed fee.

(2) Where an applicant carries on business at more than one location in the Province, he shall apply for registration for each location.

(3) A registration or renewal of registration expires at midnight on the day before the anniversary of the day in the previous year that it came into effect.

(4) The Registrar may register or renew registration on terms, conditions or restrictions he considers necessary.

(5) The Registrar may grant or renew a registration to be effective on a date subsequent to the date his decision is made.

Refusal,
suspension or
termination

5 Where the financial responsibility or past conduct of an applicant or person registered, or its officers or directors, if the applicant or person registered is a corporation, is, in the opinion of the Registrar, such that it would not be in the public interest for the applicant or person to be registered or continue to be registered, the Registrar may,

- (a) where the application is made under section 4, refuse to register, or refuse to renew registration; or
- (b) where a person is registered,
 - (i) cancel the registration, or
 - (ii) suspend the registration for a period of time and subject to conditions the Registrar considers necessary.

Hearing

6 Where the Registrar proposed to

- (a) refuse to register or refuse to renew registration,
- (b) cancel the registration, or
- (c) suspend the registration,

he shall notify the applicant, or the holder of a certificate of registration, by registered mail that

- (d) he has the right to be heard at a date and place specified in the notice, and
- (e) if the applicant or holder does not attend at that time and place, the matter may be disposed of in his absence.

Inquiries

7(1) The Registrar, in the exercise of his powers and duties under sections 4 and 5, may make inquiries and require information

- (a) he considers appropriate or necessary to decide whether or not to grant, renew, cancel or suspend registration, or

(b) respecting the business or proposed business of the applicant as authorized by the regulations.

(2) It is a condition of registration or renewal of registration that the applicant, or the holder of a certificate of registration or renewal, provide information and documents respecting the business of a motor dealer the Registrar or another person conducting an inquiry under this Act requires.

Appeal and
review by court

8 A person affected by a direction, decision, order or ruling of the Registrar may, within 30 days after the date it was mailed to him appeal to the court in the prescribed manner.

Fees

9 The fee for registration and for renewal of registration shall be prescribed by regulation, and the regulations may prescribe different fees for different classes or sizes of motor dealers' businesses and may prescribe additional fees for each place where the dealer carries on business.

Voluntary
cancellation

10 A person registered under this Act who ceases to carry on business as a motor dealer shall at once surrender his certificate of registration to the Registrar and request cancellation of his registration.

Registered name

11 A motor dealer shall, subject to the applicable zoning and other by-laws of the municipality or regional district having jurisdiction, maintain and occupy an established business premises identified by a sign naming the dealer as set out in the dealer's licence, where he shall keep and maintain records of business.

Changes

12 A motor dealer shall, within 14 days after the event, notify the Registrar in writing of a change

- (a) in the registered name or address,
- (b) in the officers or directors in the case of a corporation, or of its members in the case of a partnership, and
- (c) in the case of a corporation, in the beneficial ownership of its shares.

Representations

13(1) A motor dealer shall, 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 him under this Act, and

(b) other information prescribed.

(2) Every bill of sale used by a dealer shall be on a form approved by the Registrar.

(3) An agreement for sale of a used vehicle shall include a certification of highway safety as prescribed by the regulations under section 12 of the *Highway Traffic Act*.

(4) A dealer who issues an advertisement relating to a vehicle that does not conform to the regulations issued pursuant to the *Unfair Trade Practices Act* and the *Credit Transactions Act*, commits an offence under this Act.

Complaints

14(1) Where the Registrar receives a complaint in respect of a motor dealer, the motor dealer shall furnish to the Registrar information respecting the matter complained of the Registrar requests in writing.

(2) The request under subsection (1) shall indicate the nature of the complaint.

(3) For subsection (1), the Registrar or a person designated in writing by him may, at any reasonable time during normal business hours, enter the business premises of the motor dealer to make an inspection with respect to the complaint.

Inspection

15 A motor dealer shall, at a reasonable time during normal business hours, on request of the Registrar or a person authorized in writing by the Registrar, permit the Registrar or authorized person to

(a) enter the motor dealer's place of business,

(b) inspect the records of the business,

(c) enter premises in which any motor vehicle owned, possessed or controlled by the motor dealer for his business is kept or stored, and

(d) inspect all vehicles on the premises.

Order to refrain
from dealing with
assets

16(1) Where the Registrar has commenced an investigation of a person under this Act and he believes that it is necessary to protect individuals dealing with that person, he may order, in writing or by telegram,

(a) a person having on deposit, or under his control, or for safekeeping, assets, trust funds or other property of the person being investigated, or a debtor of the person being investigated to hold the assets, trust funds or other property of, or money owing to, that person, in trust for a receiver, liquidator or trustee to be appointed under this Act or another enactment, or

(b) the person being investigated to refrain from withdrawing assets, trust funds or other property which are on deposit with, or under the control of, or in the safekeeping of, another person, unless the Registrar consents in writing to the release of all or part of them.

(2) The Registrar may revoke in writing an order made under this section.

(3) Instead of making an order under this section, the Registrar may accept from the person being investigated

(a) a personal bond, together with collateral security,

(b) a bond or a guarantee company approved by the Registrar, or

(c) a bond of a guarantor, other than a guarantee company, together with collateral security,

on the conditions prescribed in the regulations.

(4) A person who receives an order from the Registrar under this section may,

(a) if in doubt as to the application of the order to assets, trust funds or other property on deposit with him or under his control or in his safekeeping, or

(b) if a person not named in the order claims a right, title or interest in the assets, trust funds or other property,

pay or deliver those assets, trust funds or other property into a court and, on so doing, is discharged from liability to the extent of that payment or delivery.

Receiver

17(1) Where an investigation of a person has been commenced under this Act, the Registrar may apply to the court for the appointment of a receiver, receiver manager or trustee of the property of that person.

(2) On an application under subsection (1), the court may appoint a receiver, receiver manager or trustee of the property of the person where it is satisfied that the appointment is in the best interests of

(a) the creditors of that person,

(b) persons whose property is in the possession of or under the control of that person, or

(c) consumers.

(3) A receiver, receiver manager or trustee appointed under this section is the receiver, receiver manager or trustee of all the property belonging to, held by, or on behalf of or in trust for the person named in the investigation order, and the receiver, receiver manager or trustee has authority, if directed by the court, to wind up or manage the business and affairs of the person so named and all necessary or incidental powers.

(4) An application under this section may be made either *ex parte* or on notice but, where the application is made *ex parte* the receiver, receiver manager or trustee

(a) shall be appointed for a period not exceeding 8 days, and

(b) shall not be authorized to wind up the business or affairs of the person named in the investigation order

unless the court, after a hearing, otherwise orders.

Confidentiality

18(1) A person employed in the administration of this Act, including a person making an inquiry, inspection, examination, test or investigation under this Act, shall maintain secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection, examination, test or investigation, and shall not communicate information obtained under this Act to another person not legally entitled to it except

(a) as may be required or permitted in the administration of this Act or the regulations or proceedings under this Act or the regulations,

(b) to the employee's counsel or to the court in a proceeding under this Act or the regulations,

(c) to a department or agency of a government engaged in the administration of laws, measures or rulings similar to this Act or Acts for the general protection of consumers,

(d) with the consent of the person to whom the information relates, or

(e) to a law enforcement agency where the employee suspects that a criminal offence has been committed.

(2) Except in respect of a proceeding under this Act or the regulations, no person to whom subsection (1) applies shall, in a civil proceeding, be compelled to give evidence respecting information obtained by him in the course of his duties, employment, inquiry, inspection, examination, test or investigation.

Financial statements

19(1) A motor dealer shall, where requested by the Registrar, file a financial statement signed by the motor dealer in the form and containing the information required by the Registrar and certified by a person licensed as an accountant under an Act.

(2) The information contained in a financial statement filed under subsection (1) is confidential and no person shall communicate that information to or allow access to or inspection of that information by another person not legally entitled to it under this Act.

Admissibility of
Registrar's
certificates

20(1) A statement as to

- (a) the registration or non-registration,
- (b) the filing or non-filing of a document required or permitted to be filed with the Registrar,
- (c) the date on which the facts on which proceedings are based first came to the knowledge of the Registrar, or
- (d) any other matter respecting registration, non-registration, filing or non-filing,

under this Act or the regulations, purporting to be certified by the Registrar, is, without proof of the office or signature of the Registrar, receivable in evidence as proof of the facts stated in it for all purposes in a proceeding or prosecution.

(2) A document under this Act purporting to be signed by the Minister, or a copy certified by him, is receivable in evidence in a prosecution or other proceeding as proof that the document is signed by the Minister, without proof of the office or signature of the Minister.

Odometers

21(1) Except as permitted by the regulations, no person shall

- (a) disconnect or tamper with the odometer of a motor vehicle, or
- (b) drive or operate a vehicle unless the odometer of the vehicle is in effective working order.

(2) Except as permitted by the regulations, no person shall alter, or cause to be altered, the odometer with which a motor vehicle is equipped, for misleading, or with the intent to mislead, a prospective purchaser of the motor vehicle as to the registered mileage of the motor vehicle on that odometer.

(3) A conviction of motor dealer of an offence under subsection (1) or (2) is deemed to be cause for the suspension or cancellation of registration under this Act.

(4) Where an offence under subsection (1) is committed by

- (a) an employee or agent of the owner or motor dealer, or
- (b) any other person entrusted by the owner or motor dealer with the possession of the motor vehicle,

the owner or motor dealer is deemed to be a party to the offence, and is personally liable to the penalties prescribed for the offence as a principal offender, but nothing in this subsection relieves from liability the person who actually committed the offence.

Offences and
penalties

22(1) A person

- (a) acts or carries on business as a motor dealer without a valid and subsisting certificate of registration,
- (b) knowingly furnishes false information in an application under this Act, or in a statement or return required to be furnished under this Act or the regulations,
- (c) fails to comply with an order, direction, condition of registration or other requirement made under this Act, or
- (d) contravenes sections 3, 11, 12, 13, 14, 15, 18(1), 19 or 21,

and every director or officer of a corporation who knowingly authorizes, permits or acquiesces in an act or omission referred to in this subsection, commits an offence and is liable to a fine of not more than \$2000 or to imprisonment for a term of not more than 6 months, or both.

(2) Notwithstanding subsection (1), where a corporation is convicted of an offence under subsection (1), the corporation is liable to a fine of not more than \$4000.

(3) Where there is a continuing offence under subsection (1), the person convicted is liable to a fine of not more than \$2000 for each day that the offence continues.

(4) Where a corporation is convicted of a continuing offence under subsection (1), the corporation is liable to a fine of not more than \$4000 for each day that the offence continues.

Limitation period

23 No prosecution of an offence under this Act or the regulations shall be commenced more than 2 years after the facts on which the proceeding is based first came to the attention of the Registrar.

Liability of Registrar, etc.

24(1) The Minister, the Registrar, their agents, officers, employees, representatives and persons acting on their behalf are not liable in their personal or official capacities for any loss or damage suffered by a person by reason of anything done or omitted to be done in good faith in the exercise or purported exercise of any powers given by this Act.

(2) Notwithstanding another law, subsection (1) does not relieve the Crown in right of the Province from any liability it may have at law for loss or damage suffered by any person in respect of the acts of the persons referred to in subsection (1).

Regulations

25 The Lieutenant Governor in Council may make regulations, including regulations exempting a person or motor vehicle from this Act or the regulations.

Coming into force

26 This Act comes into force on Proclamation.