

1995 BILL 207

Third Session, 23rd Legislature, 44 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 207

**MAINTENANCE ENFORCEMENT
AMENDMENT ACT, 1995**

MRS. SOETAERT

First Reading.....

Second Reading.....

Committee of the Whole

Third Reading.....

Royal Assent

Bill 207
Mrs. Soetaert

BILL 207

1995

MAINTENANCE ENFORCEMENT AMENDMENT ACT, 1995

(Assented to , 1995)

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

1 The Maintenance Enforcement Act is amended by this Act.

2 Section 1 is amended

(a) by adding the following after 1(1)(d):

(d.1) "income source" means an individual, a corporation or other entity that owes periodic payment at regular intervals to a debtor of,

- (i) wages or salary,
- (ii) a commission bonus, piece-work allowance or other amount if the payment is not recoverable by the income source from the debtor should the debtor fail to earn the commission or bonus or fail to meet any production target,
- (iii) a benefit under an accident, disability or sickness plan,

Explanatory Notes

- 1** Amends chapter M-0.5 of the Statutes of Alberta 1985.

- (iv) a disability, retirement or other pension,
- (v) an annuity,
- (vi) other income as described in the regulations.

(b) by adding the following after clause (e):

- (f) "maintenance deduction order" means an order requiring any income source that receives notice of the order to make payments to the Director in respect of the debtor named in the order out of money owed by the income source to the creditor.
- (g) "Minister" means the Minister of Justice.

(c) by adding the following after subsection (1):

- 1.1 An individual, a corporation or other entity continues to be an income source despite temporary interruptions in the periodic payments to the debtor.

3 Section 4 is amended

(a) by adding the following after subsection (2):

- (3) The Director shall in each year make a report to the Minister on the exercise of his functions under this Act and in particular the report shall specify
 - (a) the number of maintenance orders and maintenance deduction orders filed with the Director,
 - (b) the number of maintenance orders and maintenance deduction orders withdrawn and the reasons for withdrawal,
 - (c) the amount of money collected with respect to each maintenance order and maintenance deduction order filed,
 - (d) the amount of arrears with respect to each

maintenance order and maintenance deduction order filed,

- (e) the amount of arrears that have been reduced or eliminated and the reasons for the reduction or elimination of the arrears with respect to each maintenance order and maintenance deduction order filed.

4 Section 7 is amended

(a) by adding the following after section 7:

7.1(1) Every court in Alberta which, after December 31, 1995, makes a maintenance order which provides for payment of maintenance on a periodic basis at regular intervals shall also make a maintenance deduction order for the payment of the periodic maintenance ordered.

(2) A maintenance deduction order shall not be made in respect of a provisional order.

(3) Before making a maintenance deduction order, the court shall make such inquiries as it considers necessary to determine the names and addresses of each income source of the debtor and the amounts paid to the debtor by each income source.

(4) If the maintenance order is sought on consent or by way of motion for judgment or if the making of the maintenance order is uncontested, the persons prescribed by the regulations shall give the court the particulars described in subsection (3) and such other information as may be prescribed.

(5) A maintenance deduction order shall be made even though the court cannot identify an income source in respect of the debtor at the time the maintenance order is made.

7.2(1) A maintenance deduction order shall be in the form prescribed by the regulations.

(2) The maintenance deduction order shall be completed and signed by the court at the time the maintenance order is made and shall be entered in the court records immediately after it is signed, even though the maintenance order may not have been settled or signed at that time.

(3) The clerk or registrar of the court that makes a maintenance deduction order shall file it with the Director's office promptly after it is signed.

73(1) A maintenance deduction order binds every income source who is served by the Director's office with a notice of the order whether or not the income source is named in the order.

(2) The Director shall enforce a maintenance deduction order in the manner, if any, that appears practical to the Director and shall pay the amounts collected under the order to the person to whom they are owed.

(3) No person other than the Director shall enforce a maintenance deduction order.

(4) The Director shall enforce a maintenance deduction order, subject to any suspension order or variation, until the maintenance order to which it relates is terminated and there are no arrearages owing and despite the fact that the maintenance order to which it relates has not been filed in or has been withdrawn from the Director's office.

(5) The Director's office may serve a notice of a maintenance deduction order by sending the notice by prepaid ordinary mail addressed to each income source from whom it is seeking payment, and new notices may be served when the amount to be paid under a maintenance order changes or arrearages are owing.

(6) The notice shall be deemed to have been served on the individual, corporation or other entity to whom it was mailed on the fifth day following mailing, excluding Saturdays, Sundays and holidays, unless the contrary is shown.

(7) The Director shall send a copy of the notice to the

debtor by prepaid ordinary mail at his or her last address as shown on the records of the Director's office.

(8) An income source shall begin making payments to the Director's office not later than the day the first payment is to be paid to the debtor that falls at least fourteen days after the day on which the income source is served with the notice.

(9) Until an income source begins deducting maintenance payments in respect of a maintenance deduction order or if payments by an income source are interrupted or terminated, the debtor shall pay the amounts owing under the maintenance order to the Director or, if the maintenance order has been withdrawn, to the person entitled to receive maintenance.

(10) The director may include in the amount required to be deducted and paid to the Director's office any amount in arrears under a maintenance order.

(11) Subject to subsection (13), the total amount deducted in respect of a maintenance order shall not exceed 50 percent of the net amount owed by the income source to the debtor.

(12) For the purposes of this section, "net amount" means the total amount owed by the income source to the debtor at the time payment is to be made to the Director's office, less the total of the following deductions:

- (a) income tax.
- (b) Canada Pension Plan.
- (c) Unemployment Insurance.
- (d) Union dues.
- (e) Such other deductions as may be prescribed by the regulations.

(13) Subject to subsection (15), a court when it makes a maintenance deduction order, or on the motion of the Director, may order that one or more income sources pay

(20) A motion shall not be brought by an income source under clause (18)(a) or (b) by an individual, corporation or other entity, unless the income source has given written particulars of the proposed motion at least fourteen days before serving the Director with a Notice of Motion.

(21) A motion shall not be brought under clause (18)(c) by an individual, corporation or other entity, until at least fourteen days after the date that notice was given under subsection (17).

(22) Subsection (21) does not apply to the Director.

(23) An income source is liable to pay to the Director's office any amount that it failed without proper reason to deduct and pay to the office after receiving notice to deduct and pay and, in a motion under subsection (18), the court may order the income source to pay the amount that it ought to have deducted and paid to the Director's office.

(24) In addition to any other method available to enforce an order in a civil proceeding, any order made under subsection (19) or (23) may be enforced under this Act in the same manner and with the same remedies as a maintenance order.

7.4(1) A court that makes a maintenance deduction order may immediately make an order to suspend its operation or the court may, on motion, subsequently suspend its operation.

(2) The court may suspend a maintenance deduction order under subsection (1) only if,

- (a) it finds that it would be unconscionable, having regard to all of the circumstances, to require the payor to make maintenance payments through a maintenance deduction order; or
- (b) the parties to the maintenance order agree that they do not want maintenance payments collected through a maintenance deduction order and the court requires the payor to post such security as it considers adequate in accordance with the regulations.

(3) The following shall not be considered by a court in determining whether it would be unconscionable to require a payor to make maintenance payments through a maintenance deduction order:

1. The fact that the payor has demonstrated a good payment history in respect of his or her debts, including maintenance obligations.
2. The fact that the payor has had no opportunity to demonstrate voluntary compliance in respect of maintenance obligations.
3. The fact that the parties have agreed to the suspension of the maintenance order.
4. The fact that there are grounds upon which a court might find that the amount payable under the maintenance order should be varied.

(4) For the purposes of subsection (2)(b), security shall be in a minimum amount equal to the maintenance payable for four months and the security shall be in money or in such other form as may be provided for in the regulations.

(5) The Director must be served with notice of the motion and may be added as a party.

(6) A suspension order shall be completed and signed by the court at the time it is made and shall be entered in the court records immediately after it is signed.

(7) The clerk or registrar of the court that makes a suspension order shall file it with the Director's office promptly after it is made.

(8) A suspension order shall be in the form prescribed by the regulations and takes effect only when it is filed in the Director's office and every income source affected by the order has received notice of the suspension.

(9) A suspension order is automatically terminated if the payor fails to post security of the type or within the time period set out in the suspension order or if the payor fails

to comply with the maintenance order.

(10) When a suspension order is terminated under subsection (9), the maintenance deduction order is reinstated and the Director may immediately realize on any security that was posted.

(11) An order suspending the operation of a maintenance deduction order does not affect the payor's obligations under the maintenance order nor does it affect any other means of enforcing the maintenance order.

7.5(1) A payor, on motion in the court that made the maintenance deduction order,

- (a) may dispute the amount being deducted by an income source under a maintenance deduction order if he or she is of the opinion that because of a mistake of fact more is being deducted than is required under this Act;
- (b) may dispute whether he or she has defaulted in paying maintenance after a suspension order has been made under section 7.3;
- (c) may seek relief regarding the amount which is being deducted under a maintenance deduction order for arrears under a maintenance order.

(2) On a motion referred to in subsection (1), the payor shall not dispute the entitlement of a person to maintenance under a maintenance order.

(3) The Director is a necessary party to a motion referred to in subsection (1).

(4) The court shall determine the issue in a summary manner and make such order as it considers appropriate in the circumstances.

(5) On a motion under section (1)(c), the payor shall be presumed to have the ability to pay the amount being deducted for arrears and the court may vary the amount being deducted only if it is satisfied that the payor is unable for valid reasons to pay that amount but this does

not affect the accruing of arrears.

7.6(1) Subject to section 7.4, a court shall not vary the amount to be paid under a maintenance deduction order unless the maintenance order to which it relates is varied.

(2) When a maintenance order is varied to provide for or to vary periodic payments at regular intervals, a maintenance deduction order shall be made to reflect the variation.

(3) A maintenance deduction order shall not be made in respect of a provisional order that varies a maintenance order.

7.7 An agreement by the parties to a maintenance order to vary a maintenance deduction order and any agreement or arrangement to avoid or prevent enforcement of a maintenance deduction order are of no effect.

5 *Section 13 is amended by adding the following after subsection (3)*

(3.1) Prior to the termination of a continuing attachment, the Director shall consider the following:

- (a) the debtors record for paying child maintenance,
- (b) the amount of arrears owing, if any,
- (c) the financial circumstances of the debtor's child or children,
- (d) the wishes of the creditor.

6 *Section 15 is amended by*

- (a) *adding "or maintenance deduction order" after "Director or not," and*
- (b) *adding "or maintenance deduction order" after "a maintenance order".*

6 Section 15 presently reads:

15(1) Notwithstanding any other Act, a maintenance order, whether filed with the Director or not, takes priority over any unsecured judgment debt of the debtor, other than another maintenance order.

(2) Notwithstanding any other Act, a notice of continuing attachment takes priority over any other enforcement proceeding in respect of any

unsecured judgment debt of the debtor, including another maintenance order, from the date on which the notice of continuing attachment is served on the person required to pay under it.

(3) Repealed 1994 c21 s4.

(4) Money paid to the Director in respect of a maintenance order is not attachable under any other Act.

7 Section 33 presently reads:

33(1) No employer shall dismiss, suspend, lay off, penalize, discipline or discriminate against an employee if the reason for doing so is in any way related to the service of a garnishee summons or a notice of continuing attachment on the employer.

(2) On the application of an employee who alleges that he is the subject of a violation of subsection (1), the Court of Queen's Bench may, if it finds the allegation to be true, make any order in favour of the employee that it considers just, including an order for reinstatement and an award of damages.

(3) If an application is made under subsection (2), an employer who dismisses, suspends, lays off, penalizes, disciplines or discriminates against an employee in respect of whom a garnishee summons or a notice of continuing attachment is served on the employer while the garnishee summons or notice of continuing attachment is in effect or within 6 months after it has ceased to have effect shall be required to show cause for the action and, if the employer does not show cause, the action shall be deemed to have been in violation of subsection (1).

(4) Notwithstanding and in addition to an order made under subsection (2), a person who is in violation of subsection (1) is guilty of an offence and subject to a fine of not more than \$5000 and in default of payment to imprisonment for a term of not more than 6 months.

7 *Section 33 is amended by adding "or maintenance deduction order" after "a notice of continuing attachment".*