

1999 BILL 16

Third Session, 24th Legislature, 48 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 16

**MAINTENANCE ENFORCEMENT
AMENDMENT ACT, 1999**

MR. DUCHARME

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 16

1999

MAINTENANCE ENFORCEMENT AMENDMENT ACT, 1999

(Assented to _____, 1999)

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

Amends SA
1985 cM-0.5

1 The *Maintenance Enforcement Act* is amended by 1 Act.

2 The following is added after section 7:

Debtor may
file order

7.1 Notwithstanding sections 6 and 7, a debtor under a maintenance order may file the order with the Director.

3 The following is added after section 9:

Agreements

9.1(1) Where persons who are eligible to be parties to a maintenance order enter into an agreement that contains provisions providing for the payment of maintenance, either party may file that agreement with the Court of Queen's Bench.

(2) On

(a) an agreement being filed with the Court under subsection (1), and

(b) the party filing the agreement giving notice of filing to the other party and the Director,

that agreement, subject to the regulations and during the term that the agreement remains filed with the Court, may be enforced and dealt with under this Act with respect to maintenance in the same manner as if the agreement were a maintenance order.

Explanatory Notes

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

2 Section 7.1 permits a debtor to file a maintenance order with the Director.

3 Section 9.1 allows agreements that provide for the payment of maintenance to be dealt with under the Act.

(3) Within 30 days from the day that a party to the agreement is notified under subsection (2)(b) of the filing of the agreement, either party may apply to the Court to have the filing set aside.

(4) On an application under subsection (3), the Court may set aside the filing of an agreement if the Court considers it appropriate to do so in the circumstances.

(5) A maintenance order may not be varied by an agreement to which this section applies.

(6) An agreement to which this section applies may be varied by a maintenance order.

(7) Subject to the regulations, an agreement to which this section applies may be varied by a new agreement to which this section applies.

(8) This section applies only to agreements entered into on or after a day specified in the regulations that meet the requirements of the regulations.

4 The following is added after section 11:

Provision of
information to
Director

11.1(1) In this section, “business organization” means

- (a) any bank, credit union, loan corporation, trust corporation or treasury branch;
- (b) any employers or former employers of debtors;
- (c) any organization of employees
 - (i) that has as one of its objects the regulation of relations between employers and employees, and
 - (ii) that carries out functions for the purposes of facilitating the employment of those employees.

(2) On the request of the Director and for the purpose of enforcing a maintenance order under this Act, any business organization shall, if the business organization has the information, provide to the Director the following:

- (a) the social insurance number, residential address, residential telephone number and employment telephone number of the debtor;

4 Acquiring of information and provision of information with respect to debtors.

(b) the name, address and telephone number of the debtor's employer;

(c) any financial information concerning the debtor.

(3) If in the opinion of the Director a person other than a business organization has information relating to the debtor's location, employment or financial affairs, the Director may apply to the Court of Queen's Bench by an originating notice or by a notice of motion in an existing action for an order directing that person to provide to the Director the information specified in the order.

(4) An application under subsection (3) may be made ex parte or on such notice as the Court considers appropriate in the circumstances.

Locating of debtor

11.2 Subject to the regulations, the Director may employ any method that the Director considers appropriate to advertise for information as to, or otherwise make inquiries in order to determine, the whereabouts of a debtor.

Providing, etc. of information

11.3 If a debtor is in arrears in the payment of maintenance required under a maintenance order filed with the Director, the Director may, subject to the regulations, provide that information and any other ancillary information

(a) to any person or organization that provides credit ratings in respect of persons,

(b) to any person who may have an interest in the financial affairs of the debtor, and

(c) to any other person specified by the regulations.

5 Section 13 is amended

(a) by repealing subsection (1) and substituting the following:

Continuing attachment

13(1) Where a debtor has defaulted in the payment of maintenance required under a maintenance order that is filed with the Director, the Director may issue a notice of continuing attachment.

(1.1) Within 30 days from the day that the Director issues a notice of continuing attachment, the Director shall file that notice with the Court of Queen's Bench.

5 Section 13(1) and (2) presently read:

13(1) The clerk of the Court of Queen's Bench shall issue a notice of continuing attachment in accordance with the regulations forthwith on the Director's filing with the clerk

(a) notice that the debtor has defaulted in the payment of maintenance under a maintenance order, and

(b) any other material required by the regulations.

(2) Service in accordance with the regulations of a notice of continuing attachment on the person required to pay under the notice binds in accordance with the regulations and without further service

(1.2) Notwithstanding subsection (1.1), failure to file a notice of continuing attachment with the Court of Queen's Bench does not affect the operation or legal effect of that notice.

(b) in subsection (2) by striking out "Service" and substituting "Notwithstanding any other Act, service".

6 The following is added after section 13:

Continuing attachment issued by another jurisdiction

13.1(1) Subject to the regulations, if

- (a) there is filed with the Director
 - (i) an order or other document that in the opinion of the Director is similar in nature to a maintenance order under this Act and under which a person is required to make a payment that is similar in nature to maintenance under this Act, and
 - (ii) a document that in the opinion of the Director is similar in nature to a notice of continuing attachment under this Act relating to the property or funds of that person,
- (b) in the opinion of the Director, the order or other document referred to in clause (a)(i) and the document referred to in clause (a)(ii) are made, granted or otherwise issued by a competent authority in a jurisdiction outside Alberta, and
- (c) the debtor is not in Alberta but has or is purported to have property or funds located in Alberta,

the Director may serve the document referred to in clause (a)(ii) on a person in Alberta for the purpose of attaching that property or those funds.

(2) A document served under subsection (1) may be served in the same manner as a notice of continuing attachment under this Act may be served.

(3) For the purposes of this Act, once a document referred to in subsection (1)(a)(ii) is served it has the same force and effect and may be dealt with in the same manner as a notice of continuing attachment under this Act.

- (a) *all money owing or payable on the date of service to the debtor by the person required to pay,*
- (b) *all money, including wages or salary, that becomes owing or payable from time to time after the date of service to the debtor by the person required to pay, and*
- (c) *the portion of jointly owed money that is deemed under subsection (2.1) to be owned by the debtor.*

6 Provides for the filing, service and effect of certain process issued outside Alberta.

7 Section 16.1 is amended

(a) in subsection (2) by striking out “notify the Registrar” and substituting “give notice to the Registrar to refuse to provide or otherwise restrict the provision of functions or services pursuant to section 57.2(2) of the *Motor Vehicle Administration Act*”;

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

(2.1) If

(a) a debtor has defaulted in the payment of maintenance required under a maintenance order that is filed with the Director, and

(b) that default in payment or in any portion of that payment has existed for more than 60 days,

the Director may, subject to the regulations, give notice to the Registrar to cancel any operator’s licence issued to the debtor as requested in the notice.

(c) by adding the following after subsection (3):

(3.1) Even though payments are in default under a maintenance order for which notice is given under subsection (2.1), if the debtor makes arrangements for making payments of maintenance that are satisfactory to the Director, the Director shall permit the Registrar to issue an operator’s licence to that debtor subject to any terms or conditions imposed by the Director respecting the making of the payments.

(d) in subsection (4) by adding “or (2.1)” after “subsection (2)”;

(e) by adding the following after subsection (4):

(4.1) Notwithstanding anything in this section, where a debtor is subject to a maintenance order that is filed with the Director, the Director may, subject to the regulations, notify the Registrar of that fact and request that the Registrar make the debtor’s operator’s licence subject to any terms or conditions that the Director considers appropriate in the circumstances.

7 Section 16.1 presently reads:

16.1(1) In this section and section 36, "Registrar" means Registrar as defined in the Motor Vehicle Administration Act.

(2) If a debtor has defaulted in the payment of maintenance required under a maintenance order that is filed with the Director, the Director may, subject to the regulations, notify the Registrar.

(3) Even though payments are in default under a maintenance order for which notice is given under subsection (2) if the debtor makes arrangements for making payments of maintenance that are satisfactory to the Director, the Director shall permit the Registrar to issue the debtor an operator's licence or certificate of registration effective for a period of 2 years or less, as specified by the Director, and permit the Registrar to carry out any function, service, issuance, renewal, registration or any other dealing referred to in section 57.2(2) of the Motor Vehicle Administration Act.

(4) The Director shall notify the Registrar when the payments under a maintenance order for which notice is given under subsection (2) are no longer in default.

(5) The Director shall notify the Registrar when a maintenance order with respect to which a notice is filed with the Registrar is withdrawn under this Act.

8 Section 24(1) is amended by adding the following after clause (e):

- (e.1) require the debtor to forthwith provide to the Director any information concerning the debtor's financial affairs;
- (e.2) require the debtor to forthwith provide to the Director any information with respect to property or funds that are legally owned or otherwise held by a corporation or another person and that
 - (i) the debtor, or another person on behalf of the debtor, is using or otherwise dealing with or is in a position to use or otherwise deal with in a manner that is or would be similar to that of a person who legally owns or otherwise holds the property or funds, or
 - (ii) the debtor, or another person on behalf of the debtor, is in a position to compel or otherwise influence the corporation or other person
 - (A) to use or deal with as directed by the debtor or other person on behalf of the debtor, or
 - (B) to permit the debtor or other person on behalf of the debtor to use or otherwise deal with in a manner that would be similar to that of a person who legally owns or otherwise holds the property or funds;
- (e.3) if the Court has reason to believe that, with respect to property or funds that are legally owned or otherwise held by a corporation or another person, the debtor or another person on behalf of the debtor is exercising or has exercised authority over that corporation or person within the meaning of section 24.1(1), require the corporation or that other person to forthwith provide to the Director any information concerning that property or those funds and the relationship of the company or that other person with the debtor;

8 Section 24(1) presently reads:

24(1) The Court of Queen's Bench, unless it is satisfied that there are no arrears payable under the maintenance order, or that the debtor is unable because of illness, unemployment or other valid reasons to pay the arrears or to make subsequent payments required under the maintenance order, may do one or more of the following:

- (a) require the debtor to discharge the arrears payable by such periodic payments as the Court directs;*
- (b) require the debtor to discharge the arrears payable in full by a specified date;*
- (c) require the debtor to comply with the maintenance order to the extent of the ability of the debtor to pay, but an order under this clause does not affect the accruing of arrears payable under the maintenance order;*
- (d) require the debtor to provide security in such form, including an assignment of debt or wages, as the Court directs for payments in arrears and subsequent payments;*
- (e) require the debtor to provide forthwith to the Court, the Director or a person specified in the order particulars of any change of address or employment as soon as it occurs;*
- (f) imprison the debtor continuously or intermittently for not more than 90 days unless the arrears payable are sooner paid;*
- (g) imprison the debtor continuously or intermittently for not more than 90 days if the debtor defaults in any payment ordered under this subsection;*
- (h) appoint the Director or another person as a receiver of money owing or payable to, or to become owing or payable to, or earned or to be earned by the debtor to the extent of the default and, in addition, to the extent of any periodic payments payable or to become payable under the maintenance order or an order under this subsection.*

9 The following is added after section 24:

Other assets

24.1(1) In this section and section 24(1)(e.3), a reference to a debtor, or another person on behalf of a debtor, exercising authority over a corporation or other person is a reference to the situation whereby, with respect to property or funds that are legally owned or otherwise held by that corporation or other person,

- (a) the debtor, or another person on behalf of the debtor, is using or otherwise dealing with or is in a position to use or otherwise deal with that property or those funds in a manner that is or would be similar to that of a person who legally owns or otherwise holds the property or funds, or
- (b) the debtor, or another person on behalf of the debtor, is in a position to compel or otherwise influence the corporation or other person
 - (i) to use or deal with that property or those funds as directed by the debtor or another person on behalf of the debtor, or
 - (ii) to permit the debtor, or another person on behalf of the debtor, to use or otherwise deal with that property or those funds in a manner that would be similar to that of a person who legally owns or otherwise holds the property or funds.

(2) If

- (a) a debtor has defaulted in the payment of maintenance required under a maintenance order that is filed with the Director, and
- (b) in the opinion of the Director, with respect to property or funds that are legally owned or otherwise held by a corporation or other person, the debtor or another person on behalf of the debtor is exercising authority over the corporation or person,

the Director may apply to the Court of Queen's Bench for an order directing that the property is or the funds are attachable, subject to seizure and sale or subject to a continuing attachment, as the case may be, for the purposes of payment of the arrears of maintenance payable under the maintenance order.

9 Section 24.1 provides for dealing with assets owned or held by another person but under the control of a debtor.

(3) An application under subsection (2) may be made by an originating notice or by a notice of motion within an existing action.

(4) An application under subsection (2) may be made ex parte if the Court considers it appropriate to do so in the circumstances.

(5) If on hearing an application the Court is satisfied that

- (a) the debtor has defaulted in the payment of maintenance required under a maintenance order that is filed with the Director, and
- (b) with respect to property or funds that are legally owned or otherwise held by a corporation or other person, the debtor, or another person on behalf of the debtor, is exercising or has exercised authority over the corporation or other person,

the Court may by order do one or more of the following:

- (c) for the purposes of payment of the arrears of maintenance payable under the maintenance order, direct that that property or those funds or any specific portion of that property or those funds is attached, is subject to seizure and sale or is subject to a continuing attachment, as the case may be;
- (d) give such other directions as the Court considers appropriate in the circumstances;
- (e) award costs.

10 Section 25 is repealed and the following is substituted:

Suspension

25(1) If continuing attachment proceedings are taken under this Act by the Director or the creditor, the debtor may apply by notice of motion to the Court of Queen's Bench for an order suspending those proceedings on any condition the Court considers appropriate for a period specified in the order, not to exceed the periods provided for under subsections (5) and (6).

(2) An order granted under this section suspending continuing attachment proceedings may be made only if the Court is satisfied that the debtor is unable for valid reasons to make the payments required under the maintenance order.

10 Section 25 presently reads:

25(1) If garnishment or continuing attachment proceedings are taken by the Director or the creditor or an order is made under section 14, the debtor may apply by notice of motion to the Court of Queen's Bench for an order suspending the garnishment or continuing attachment on any condition the Court considers appropriate for a period specified in the order.

(1.1) Notice of an application under subsection (1) or (4) must be served on the Director.

(2) An order suspending garnishment or continuing attachment shall be made only if the Court is satisfied that the debtor is unable for valid reasons to make the payments required under the maintenance order.

(3) Notwithstanding subsection (1), an order granted under this section does not suspend or affect

(a) any enforcement proceedings respecting the payment of maintenance carried out in relation to a federal enactment;

(b) any registration or filing made by the Director under the *Land Titles Act* or in the Personal Property Registry;

(c) any proceeding or action taken under section 16.1.

(4) An order may not be granted by a court under any other enactment or otherwise that has the effect of suspending or staying any proceeding, matter or action referred to in subsection (3).

(5) An order granted pursuant to an application made under subsection (1) suspending the continuing attachment proceedings expires at the conclusion of 3 months from the day the order is entered with the Court or of any shorter period provided for in the order.

(6) Notwithstanding subsection (5), if within the 3-month period or shorter period referred to in subsection (5) the debtor applies to a court in Alberta to vary the maintenance order referred to in subsection (2), the Court of Queen's Bench may make an order suspending the continuing attachment proceedings for only one further period of not more than 6 months.

(7) Subject to subsections (5) and (6), in making an order suspending any continuing attachment proceedings referred to in subsection (1), the Court of Queen's Bench shall state in the order the period of time or the circumstances under which the suspension of the proceedings remains in effect.

(8) If an order is made under this section, the Court of Queen's Bench may direct that any money or any portion of the money paid into the Court or to the Director in respect of the proceedings that were suspended and that is still in the possession of or under the control of the Court or the Director, as the case may be, be paid to the debtor.

(9) Notice of any application made under subsection (1) or (6) must be served by the applicant on the Director.

(3) If the maintenance order can be varied by a court in Alberta, the period of suspension in an order made under subsection (1) shall not be more than 3 months.

(4) The period of suspension in an order made under subsection (1) to which subsection (3) applies may be extended by the Court of Queen's Bench on application by the debtor before the order expires for 1 further period of not more than 3 months.

(5) If an order is made under this section, the Court of Queen's Bench may order that any money paid into the Court of Queen's Bench in respect of the garnishment or to the Director in respect of the continuing attachment be paid to the debtor.

11 The following is added after section 35:

Costs of enforcement

35.1(1) If in the opinion of the Director a debtor meets the criteria set out in the regulations for being classified as being chronically in default in the payment of maintenance required under a maintenance order that is filed with the Director, the Director may, subject to the regulations, require the debtor to pay to the Director an amount specified by the Director to defray the costs incurred by the Director in the enforcement of the maintenance order.

(2) Any amount that a debtor is required to pay to the Director under subsection (1) may be collected in the same manner as maintenance may be enforced under this Act.

Substitutional service

35.2 If with respect to proceedings concerning the payment of maintenance a court makes an order under which a document may be substitutionally served on a party to the proceedings by service on the Director, the Director may, subject to the regulations, serve the document on the party in any manner that the Director considers appropriate in the circumstances.

Action for damages

35.3(1) No action lies against the Government or the Director for any act or thing done or omitted to be done or purported to be done in the execution of the Director's duty or for any act or thing done or purported to be done in a matter in which the Director has exceeded the Director's jurisdiction unless it is proved that the Director acted maliciously and without reasonable and probable cause.

(2) No action lies against

(a) the Government or any person employed by the Government, or

(b) any person acting under the directions of the Director or a court

in respect of any act or thing done or omitted to be done or purported to be done under this Act or in respect of the enforcement of a maintenance order under this Act unless it is proved that the person acted maliciously and without reasonable and probable cause.

(3) This section does not apply to any cause of action that arose before the coming into force of this section.

11 Section 35.1 provides for the charging of costs of enforcement. Section 35.2 deals with substitutional service. Section 35.3 protects the Director and other Government employees from legal action.

12 Section 36 is amended

- (a) in clause (b.1) by striking out “section 16.1(2)” and substituting “section 16.1”;**
- (b) in clause (b.2) by striking out “section 16.1(3)” and substituting “section 16.1”;**
- (c) by adding the following after clause (c.1):**
 - (c.2) respecting the information that may be released by the Director concerning a debtor’s credit rating;
 - (c.3) respecting agreements, the filing of agreements and the varying of agreements referred to in section 9.1;
 - (c.4) respecting the advertising for and eliciting of information under section 11.2;
 - (c.5) respecting the provision of information under section 11.3;
 - (c.6) respecting the costs of enforcement under section 35.1;
 - (c.7) respecting the service of documents by the Director under section 35.2;
 - (c.8) respecting the classification of debtors as being chronically in default in the payment of maintenance and charging those debtors amounts for the purpose of defraying the costs of enforcement of maintenance orders;
 - (c.9) respecting the filing of and dealing with orders and documents originating from another jurisdiction;
 - (c.91) respecting the charging of fees for services provided by the Director;

13 The *Court of Queen’s Bench Act* is amended by repealing section 9(2.1).

12 Section 36(b.1) and (b.2) presently read:

36 The Lieutenant Governor in Council may make regulations

(b.1) respecting the notification of the Registrar by the Director under section 16.1(2);

(b.2) governing how the Director carries out his powers and duties under section 16.1(3);

13 Repeals section 9(2.1) of the Court of Queen's Bench Act, which reads as follows:

(2.1) Notwithstanding subsection (2), the master in chambers has the same power and may exercise the same jurisdiction as the Court under sections 12, 13 and 21 to 25 of the Maintenance Enforcement Act.

14 The *Motor Vehicle Administration Act* is amended in section 57.2 by adding the following after subsection (2):

(2.1) If the Director notifies the Registrar pursuant to section 16.1(2.1) of the *Maintenance Enforcement Act*, the Registrar must, as requested in the notice, cancel any operator's licence issued to the debtor named in the notice.

(2.2) If the Director notifies the Registrar pursuant to section 16.1(4.1) of the *Maintenance Enforcement Act*, the Registrar must, as requested in the notice, make any operator's licence issued to the debtor named in the notice subject to any terms or conditions that the Director considers appropriate.

(2.3) Any cancellation made under subsection (2.1) remains in effect, subject to section 16.1(3.1) of the *Maintenance Enforcement Act*, until the Director gives a notice to the Registrar under section 16.1(4) of the *Maintenance Enforcement Act*.

15 This Act comes into force on Proclamation.

14 Amends section 57.2 of the Motor Vehicle Administration Act, which reads as follows:

57.2(1) In this section, "Director" means Director of Maintenance Enforcement appointed under the Maintenance Enforcement Act.

(2) If the Director notifies the Registrar pursuant to section 16.1(2) of the Maintenance Enforcement Act, the Registrar must

(a) in respect of the debtor named in the notice, refuse to perform any function or service or to issue, renew or otherwise deal with any document, operator's licence, certificate of registration, in transit permit or licence plate, and

(b) refuse to register the vehicle in the name of a new owner if the ownership of a registered vehicle passes from a person who is a debtor under the maintenance order directly or through intermediary owners to a person described by the regulations,

except as permitted by the Director under section 16.1(3) of the Maintenance Enforcement Act, until the Director withdraws the notice or notifies the Registrar that the maintenance order has been withdrawn.

(3) The Lieutenant Governor in Council may make regulations

(a) authorizing the Registrar to refuse to register a vehicle in the name of a new owner if the ownership of a registered vehicle passes directly or indirectly from a person who is a debtor under a notice filed by the Director with the Registrar under subsection (2) to a class of persons;

(b) governing persons or classes of persons referred to in clause (a).

15 Coming into force.