



# **BILL NO. 44**

*Government Bill*

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*3rd Session, 62nd General Assembly  
Nova Scotia  
65 Elizabeth II, 2016*

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## **An Act to Amend Chapter 6 of the Acts of 1994-95, the Maintenance Enforcement Act**

CHAPTER 24  
ACTS OF 2016

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
NOVEMBER 10, 2016**

The Honourable Diana C. Whalen  
*Attorney General and Minister of Justice*

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*Halifax, Nova Scotia  
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**An Act to Amend Chapter 6  
of the Acts of 1994-95,  
the Maintenance Enforcement Act**

Be it enacted by the Governor and Assembly as follows:

**1 Section 2 of Chapter 6 of the Acts of 1994-95, the *Maintenance Enforcement Act*, as amended by Chapter 28 of the Acts of 1995-96, Chapter 9 of the Acts of 2002, Chapter 40 of the Acts of 2004 and Chapter 44 of the Acts of 2015, is further amended by**

- (a) striking out “a requirement in” in the first and second lines of clause (e);**
- (b) adding “and a support order as defined in the *Interjurisdictional Support Orders Act*” immediately after “Act” in the third-last line of clause (e); and**
- (c) adding immediately after clause (f) the following clause:**
  - (fa) “persistent arrears” means arrears resulting from the payor’s failure to make, in full, all payments required under a maintenance order for the number of times prescribed by the regulations or in the total accumulated amount prescribed by the regulations;

**2 (1) Subsection 7(1) of Chapter 6 is amended by adding “, unless that person is enforcing an order in a reciprocating jurisdiction on behalf of the Director” immediately after “Director” in the last line.**

**(2) Section 7 of Chapter 6 is further amended by adding immediately after subsection (2) the following subsection:**

(3) Notwithstanding subsection (1), during the time the Director is enforcing part or all of a maintenance order, a recipient may, with the Director’s consent, take additional enforcement measures for the same provisions of the maintenance order being enforced by the Director.

**3 (1) Subsection 8(1) of Chapter 6 is amended by adding “, investigators” immediately after “officers” in the second line.**

**(2) Section 8 of Chapter 6 is further amended by adding immediately after subsection (2) the following subsections:**

(3) Subject to subsection 31(1A), an investigator has the authority to obtain, on behalf of the Director, and in accordance with the direction of the Director, all information necessary for the enforcement of a maintenance order.

(4) The authority of an investigator pursuant to subsection (3) includes the conduct of video surveillance.

**4 (1) Subsection 9(2) of Chapter 6 is amended by adding “and shall provide the current contact information for the parties to the order” immediately after “issued” in the last line.**

**(2) Section 9 of Chapter 6 is further amended by adding immediately after subsection (2) the following subsections:**

(3) During the time a maintenance order is filed with the Director, the Director may request any financial information with respect to the parties to the order from the prothonotary or officer of the court.

(4) Upon receiving a request pursuant to subsection (3), the prothonotary or officer of the court shall provide the requested financial information.

**5 (1) Subsection 10(8) of Chapter 6, as amended by Chapter 9 of the Acts of 2002, is further amended by**

(a) striking out “maintenance” in the first line and substituting “support”; and

(b) striking out “by a court” in the first line.

**(2) Subsection 10(9) of Chapter 6 is amended by striking out “maintenance” in the first line and substituting “support”.**

**6 Clause 11(1)(a) of Chapter 6 is amended by adding “, without the Director’s consent.” immediately after “order” in the last line.**

**7 Subsection 17(2) of Chapter 6 is repealed and the following subsection substituted:**

(2) Notwithstanding any approved arrangement made pursuant to subsection (1) or revised arrangement negotiated pursuant to subsection (3), the Director may, at any time, take any action that the Director is authorized to take to enforce the maintenance order that is the subject of the approved or revised arrangement.

**8 (1) Subsection 18(4) of Chapter 6, as enacted by Chapter 30 of the Acts of 1998, is amended by**

(a) striking out “recipient” in the third line of clause (a) and substituting “recipient’s”;

(b) striking out the comma at the end of clause (b) and substituting a period; and

(c) striking out the last two lines.

**(2) Section 18 of Chapter 6 is further amended by adding immediately after subsection (4) the following subsections:**

(4A) Where funds remain after the payment of money pursuant to subsection (4), the Director may pay from those funds the costs and fees of the Director and in the event funds remain after such payment, the balance then remaining may be paid to the payor by the Director.

(4B) Where a payor is in persistent arrears and funds remain after the payment of money pursuant to subsection (4), the Director may set aside and hold a portion or all of the remaining funds to pay future maintenance obligations arising from the maintenance order.

(4C) Upon the satisfaction of all future obligations arising from the maintenance order referred to in subsection (4B) and, where the Director continues to hold funds, the Director may pay from those funds the costs and fees of the Director and the balance then remaining, if any, may be paid to the payor by the Director.

**(3) Subsection 18(6) of Chapter 6 is amended by**

- (a) striking out “or” in the second line and substituting a comma;**
- (b) adding “court, prothonotary or officer of the court” immediately after “payor” in the second line; and**
- (c) striking out “an annual” in the third line and substituting “a”.**

**9 Subsection 19(3) of Chapter 6 is repealed and the following subsection substituted:**

- (3) The Director may include in the amount required to be deducted and paid to the Director pursuant to subsection (1)
  - (a) any amount in arrears under a maintenance order;
  - (b) where the payor is in persistent arrears, any amount for the payor’s future maintenance obligations; and
  - (c) any costs and any fees of the Director prescribed pursuant to this Act.

**10 (1) Subsection 27(1) of Chapter 6 is amended by striking out “issue a garnishment” in the second-last line and substituting “serve the filed document on any income source of the payor”.**

**(2) Section 27 of Chapter 6 is further amended by adding immediately after subsection (1) the following subsection:**

(1A) Where a garnishment or a document of similar effect is served pursuant to subsection (1), the document is enforceable in the same manner as a garnishment issued pursuant to Section 19.

**11 (1) Subsection 28(1) of Chapter 6 is repealed and the following subsection substituted:**

- (1) The Director may seize money in a deposit account of a payor to
  - (a) enforce an obligation to pay money under a maintenance order including arrears; and
  - (b) where the payor is in persistent arrears, pay the payor’s future maintenance obligations.

**(2) Subsection 28(4) of Chapter 6 is repealed and the following subsection substituted:**

(4) The Director may issue an order for the seizure and sale of real or personal property of the payor to

(a) enforce an obligation to pay money under a maintenance order including arrears; and

(b) where the payor is in persistent arrears, pay the payor's future maintenance obligations.

**12 Section 29 of Chapter 6, as amended by Chapter 40 of the Acts of 2004, is further amended by adding immediately after subsection (2) the following subsection:**

(2A) For the purpose of this Section, where the Director files a lien with respect to a maintenance order and the order is subsequently varied, the Director may file the variation order in the same manner as the maintenance order, whereupon the lien becomes a lien in respect of the maintenance order as varied without any effect on the priority of the lien.

**13 Section 30 of Chapter 6 is repealed and the following Section substituted:**

30 (1) Where a payor is in arrears under a maintenance order being enforced by the Director, the Director may request the Registrar of Motor Vehicles to

(a) suspend or revoke the payor's driver's licence, owner's permit, registration of a vehicle or permit or right to operate a motor vehicle or any other licence issued to the payor;

(b) suspend or revoke the payor's privilege of obtaining a driver's licence;

(c) refuse to issue or renew a payor's driver's licence or owner's permit;

(d) refuse to transfer or register the payor's vehicle; and

(e) refuse to issue a document or provide any other service to the payor pursuant to the *Motor Vehicle Act*.

(2) Before making a request pursuant to clause 30(1)(a), the Director shall send a notice to the payor by mail informing the payor that, if payor does not, within the time prescribed by the regulations, make an arrangement satisfactory to the Director for complying with the maintenance order, the Director may request the Registrar of Motor Vehicles suspend or revoke the payor's driver's licence, owner's permit, registration of a vehicle or permit or right to operate a motor vehicle and any other licence issued to the payor.

(3) Upon receiving a request from the Director pursuant to clause 30(1)(a), (b), (c) or (d), the Registrar of Motor Vehicles shall, as the case may be,

(a) suspend or revoke the payor's driver's licence, owner's permit, registration of a vehicle or permit or right to operate a motor vehicle or any other licence issued to the payor;

- (b) suspend or revoke the payor's privilege of obtaining a driver's licence;
- (c) refuse to issue or renew a payor's driver's licence or owner's permit; or
- (d) refuse to transfer or register the payor's vehicle,

and the suspension, revocation or refusal remains in place until the Director advises the Registrar that the arrears have been paid or the payor has made an arrangement satisfactory to the Director for complying with the maintenance order, at which time the Registrar shall rescind the suspension, revocation or refusal.

(4) Where a payor fails to comply with any term of an arrangement made with the Director and referred to in subsections (2) and (3), the Director may make a new request pursuant to subsection (1).

(5) The Registrar may grant the Director's request made pursuant to clause 30(1)(e).

(6) Where the Registrar grants the requested refusal referred to in subsection (5), the Registrar's refusal continues until the Director advises the Registrar that the arrears have been paid or the payor has made an arrangement satisfactory to the Director for complying with the maintenance order, at which time the Registrar shall rescind the refusal.

(7) For the purpose of subsections (3) and (6), the Director shall advise the Registrar immediately when the arrears have been paid or the payor has made a satisfactory arrangement with the Director.

**14 Subsection 31(1) of Chapter 6 is repealed and the following subsections substituted:**

31 (1) For the purpose of enforcing a maintenance order or of obtaining information for a person performing a similar function in another jurisdiction, the Director may order a person, including the payor, a recipient, a corporation or a public body (including Her Majesty and a law enforcement agency), to provide any information, including personal information, that, in the opinion of the Director, may assist in the enforcement of the maintenance order or obtaining of information and that is within the knowledge of, or shown on a record in the possession or control of, the person, including

- (a) the payor's or the payor's spouse's
  - (i) wages, salary or other remuneration,
  - (ii) sources of income,
  - (iii) assets and liabilities,
  - (iv) financial status,
  - (v) income tax returns,
  - (vi) location, address and place of employment,
  - (vii) location, address and place of residence,

- (viii) social insurance number,
- (ix) date of birth,
- (x) photograph,
- (xi) name including any alias spelling of it, and
- (xii) different name including any alias spelling of it;

(b) any change in the payor's or the payor's spouse's circumstances that may affect the amount of maintenance paid under the order; and

(c) the payor's mother's maiden name.

(1A) An investigator may request any information referenced in subsection (1) but does not have the authority to order the production of the information.

**15 Section 31A of Chapter 6, as enacted by Chapter 43 of the Acts of 2007, is amended by adding “, a prothonotary or an officer of the court” immediately after “court” in the first line.**

**16 (1) Subsection 32(1) of Chapter 6, as amended by Chapter 30 of the Acts of 1998, Chapter 40 of the Acts of 2004 and Chapter 53 of the Acts of 2005, is further amended by**

**(a) striking out “in accordance with an information sharing agreement entered into under and” in the first, second and third lines of clause (ba);**

**(b) striking out “or” at the end of clause (bb);**

**(c) striking out the period at the end of clause (c) and substituting a semicolon; and**

**(d) adding immediately after clause (c) the following clauses:**

(d) for the purpose of an audit of the Maintenance Enforcement Program;

(e) for the purpose of assessing a liability claim or potential claim against Her Majesty in right of the Province or the Maintenance Enforcement Program;

(f) for research purposes including statistical research projects;

(g) if the Director believes the information is required for the protection of a person's health or safety;

(h) on request, to a court, a prothonotary or an officer of the court, if relevant to a proceeding before the court or the Supreme Court of Nova Scotia;

(i) on request, to a recalculation clerk appointed pursuant to Section 6 of the *Administrative Recalculation of Child Maintenance Regulations*, for the purpose of an administrative recalculation;

(j) on request, to a designated authority as defined in the *Inter-jurisdictional Support Orders Act*, for a purpose relating to that Act;

(k) on request, to a department or office established pursuant to the *Public Service Act*, if the information is required to carry out the mandate of the department or office;

(l) where authorized by the recipient, to a third party, if the information would otherwise be released by the Director to the recipient;

(m) where authorized by the payor, to a third party, if the information would otherwise be released by the Director to the payor;

(n) to inform a recipient that a payor is in receipt of income assistance benefits or other income that is excluded from garnishment;

(o) to the Ombudsman upon the Ombudsman's request; or

(p) if otherwise prescribed by the regulations.

**(2) Section 32 of Chapter 6, as amended by Chapter 30 of the Acts of 1998, Chapter 40 of the Acts of 2004 and Chapter 53 of the Acts of 2005, is further amended by adding immediately after subsection (1) the following subsections:**

(1A) Any person who obtains information pursuant to subsection (1) must comply with the conditions established by the Director regarding the disclosure of the information.

(1B) The conditions referred to in subsection (1) may include, without limiting the generality of the foregoing,

(a) the implementation of security measures to prevent unauthorized disclosure of the information; and

(b) the use and destruction of the information.

**(3) Subsection 32(4) of Chapter 6 is repealed.**

**17 Section 33 of Chapter 6 is amended by**

**(a) adding “or fails to comply with the conditions referred to in subsection 32(1A),” immediately after “Act” in the second line; and**

**(b) striking out “that” in the third line and substituting “than”.**

**18 Clause 34(1)(b) of Chapter 6, as amended by Chapter 28 of the Acts of 1995-96, is further amended by adding “in person, or by telephone, video conference or other electronic means acceptable to the Director,” immediately after “Director” in the first line.**

**19 Section 36 of Chapter 6, as amended by Chapter 28 of the Acts of 1995-96 and Chapter 44 of the Acts of 2015, is further amended by adding immediately after subsection (1) the following subsection:**

(2) Where a payor received a notice to appear and failed to appear before the Director to be examined pursuant to clause 34(1)(b), the Director may take one or more of the actions referred to in subsection (1).

**20 Subsection 42(1) of Chapter 6 is amended by**

- (a) striking out “or” in the first line and substituting “and a”;**
- (b) striking out “a” in the third line and substituting “each”; and**
- (c) adding “and of each change of electronic contact address” immediately after “address” in the third line.**

**21 Chapter 6 is further amended by adding immediately after Section 42 the following Section:**

42A (1) Where the Director sends a document by mail to a payor or to a recipient or where the Director is required to

- (a) give notice, by ordinary mail, pursuant to Section 14;
- (b) send a copy of a garnishment, by ordinary mail, pursuant to subsection 19(5);
- (c) give notice, by mail, pursuant to subsection 30(2); or
- (d) send a copy of a maintenance order, by regular mail, pursuant to Section 55,

the Director shall mail the document to the payor or recipient at the most recent address in the Director’s records, and the document is deemed to have been received ten days after the date of mailing.

(2) The Director may make use of electronic transmission, including facsimile or electronic mail, to send the document referred to in subsection (1) to the payor or recipient at the most recent electronic contact address in the Director’s records, and the document is deemed to have been received ten days after the electronic transmission was completed.

(3) Deemed receipt of a document within ten days of mailing or ten days after the completion of the electronic transmission referenced in subsections (1) and (2) does not apply to

- (a) the receipt of the Director’s written request that the payor file a statement of financial information pursuant to clause 34(1)(a);
- (b) the receipt of the Director’s notice that the payor appear for examination pursuant to clause 34(1)(b);
- (c) the service of a notice pursuant to Section 27B; and
- (d) the service of a notice of a court application under this Act.

**22 Subsection 43(1) of Chapter 6, as enacted by Chapter 12 of the Acts of 1998, is further amended by striking out “(Family Division)” in the fourth and fifth lines and substituting “including its Family Division”.**

**23 Chapter 6 is further amended by adding immediately after Section 44 the following Section:**

44A (1) Where the Director is unable to locate the person entitled to the money received by the Director, the Director shall hold the money for the benefit of that person and shall maintain a record of the money.

(2) The Director shall make all reasonable efforts to locate the person entitled to the money during the time the money is held pursuant to subsection (1).

(3) Where the Director is unable to locate the person entitled to the money held by the Director for the benefit of that person for a period of two years after receiving the money, the Director shall pay the money to the Minister of Finance and the money may be used for the purposes of the Province, except that the Minister shall account for the money.

(4) A person claiming entitlement to any money held by the Minister of Finance under this Act may make an application to the Supreme Court of Nova Scotia or a judge thereof requiring payment of money by the Minister of Finance.

(5) The Director shall provide and the person making an application pursuant to subsection (4) shall file an affidavit in support of the application confirming the payment made by the Director to the Minister of Finance and any payments made from the fund by the Director.

(6) The application referred to in subsection (4) must be made

(a) within ten years after the money was paid to the Minister of Finance by the Director; or

(b) where the person claiming entitlement to the money is under the age of nineteen years or of unsound mind or out of Province, within ten years after the person becomes of full age or of sound mind or returns to the Province, and in any event within forty years after the money was paid to the Minister of Finance by the Director.

**24 Subsection 47(1) of Chapter 6 is amended by adding “and the fees and costs are a debt due to Her Majesty in right of the Province and may be recovered in the same manner as a debt due to Her Majesty” immediately after “regulations” in the last line.**

**25 Clause 50A(4)(c) of Chapter 6, as enacted by Chapter 40 of the Acts of 2004, is amended by striking out “60(1)” in the seventh line and substituting “40(1)”.**

**26 (1)** Notwithstanding subsection 17(2) of the *Maintenance Enforcement Act*, the Director shall not take any action to enforce a maintenance order where the payor is complying, to the Director’s satisfaction, with an arrangement made under the *Maintenance Enforcement Act* before the coming into force of this Act.

**(2)** Nothing in this Act affects the validity of a conditional licence issued by the Registrar of Motor Vehicles at the request of the Director pursuant to the *Maintenance Enforcement Act* before the coming into force of this Act.

(3) Any outstanding fees and costs charged pursuant to the *Maintenance Enforcement Act* before the coming into force of this Act are deemed to be debts due to Her Majesty in right of the Province and may be recovered in the same manner as a debt due to Her Majesty.

(4) Any money held by the Director for the benefit of a person the Director is unable to locate pursuant to the *Maintenance Enforcement Act*

(a) for a period of at least two years before the coming into force of this Act, must be paid to the Minister of Finance within six months of the coming into force of this Act; or

(b) for a period of less than two years before the coming into force of this Act, must continue to be held until at least two years have passed since the date the money was first received and held by the Director.

**27 Section 278A of Chapter 298 of the Revised Statutes, 1989, the *Motor Vehicle Act*, as enacted by Chapter 6 of the Acts of 1994-95, is repealed and the following Section substituted:**

278A Upon receipt of a request from the Director of Maintenance Enforcement pursuant to subsection 30(1) of the *Maintenance Enforcement Act*,

(a) the Registrar shall suspend or revoke a payor's driver's licence, owner's permit, registration of a vehicle or permit, any other licence issued to the payor, the privilege of obtaining a driver's licence or the right to operate a motor vehicle;

(b) the Registrar shall refuse to issue or renew a payor's licence or owner's permit, to transfer or register a payor's vehicle; and

(c) the Registrar may refuse to issue a document or provide any other service to the payor, pursuant to this Act.

**28** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

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