



# **BILL NO. 118**

*Government Bill*

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*3rd Session, 61st General Assembly  
Nova Scotia  
60 Elizabeth II, 2011*

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## **An Act to Amend Chapter 293 of the Revised Statutes, 1989, the Motor Vehicle Act**

CHAPTER 67  
ACTS OF 2011

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
DECEMBER 15, 2011**

The Honourable John M<sup>ac</sup>Donell  
*Minister of Service Nova Scotia and Municipal Relations*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 293  
of the Revised Statutes, 1989,  
the Motor Vehicle Act**

Be it enacted by the Governor and Assembly as follows:

**1 Chapter 293 of the Revised Statutes, 1989, the *Motor Vehicle Act*, is amended by adding immediately after Section 7A the following Sections:**

7B (1) There shall be a Medical Advisory Committee composed of such medical doctors, optometrists, psychologists and other licensed healthcare professionals appointed by the Minister as the Minister considers necessary for the functions and duties assigned to the Committee pursuant to this Act.

(2) The Minister may

- (a) set the term of appointment; and
- (b) determine the remuneration,

of the members of the Medical Advisory Committee.

(3) The Medical Advisory Committee shall perform the duties and functions assigned to it by this Act.

(4) The Medical Advisory Committee or a member of the Committee shall, when requested by the Registrar, provide any information, recommendations and opinions required by the Registrar for the purpose of this Act.

(5) Subject to subsection (6), no person shall disclose

- (a) any information related to a request that is referred to the Medical Advisory Committee by the Registrar; or
- (b) any information, recommendations or opinions provided to the Registrar by the Committee.

(6) A person may disclose information described in subsection (5) if the disclosure is required to

- (a) administer this Act or the regulations; or
- (b) carry out a responsibility imposed or exercise a power conferred by this Act or the regulations.

7C (1) There shall be a Motor Vehicle Appeal Board composed of three or more persons appointed by the Minister.

(2) The Minister may

- (a) set the term of appointment; and
- (b) determine the remuneration,

of the members of the Motor Vehicle Appeal Board.

(3) The Minister may designate a member of the Motor Vehicle Appeal Board as Chair.

- (4) The Motor Vehicle Appeal Board shall perform the duties and functions assigned to it by this Act.
- (5) The Motor Vehicle Appeal Board shall hear appeals with respect to
- (a) decisions by the Registrar, pursuant to subsection (2) of Section 279, to suspend or revoke a driver's license or privilege of obtaining a driver's license suspended pursuant to clause (a), (b), (d), (e) or (f) of subsection (1) of Section 279;
  - (b) decisions by the Registrar pursuant to Section 279B to sustain orders of suspension issued pursuant to Section 279A; or
  - (c) orders to impound motor vehicles issued by the Registrar pursuant to Section 291A.
- (6) The Motor Vehicle Appeal Board is not required to hold an oral hearing unless the appellant requests an oral hearing at the time of filing the appeal and pays the fee prescribed by the regulations.
- (7) An appeal to the Motor Vehicle Appeal Board may be conducted in writing or, at the request of the appellant, may be conducted in person.
- (8) Where an appeal to the Motor Vehicle Appeal Board is conducted in person, the hearing must be conducted *in camera* and may be attended by
- (a) the appellant and the appellant's representative, if any; and
  - (b) any person granted permission by the Board to attend.
- (9) No person other than the appellant or the appellant's representative shall publicly disclose
- (a) any information concerning the appellant that is referred to or heard by the Motor Vehicle Appeal Board for the purpose of the appeal; or
  - (b) the appeal decision of the Board.
- (10) A decision of the Motor Vehicle Appeal Board is final and not subject to any further appeal or review.
- (11) The Minister may make regulations respecting appeals to the Motor Vehicle Appeal Board, including regulations
- (a) prescribing the form and manner of filing an appeal;
  - (b) prescribing the fees for filing an appeal;
  - (c) prescribing the manner or place for conducting an appeal;
  - (d) respecting requirements for evidence provided for an appeal;
  - (e) setting the quorum for the Board;
  - (f) respecting the form of appeal decisions; and
  - (g) respecting such other matters as are necessary for the administration of appeals.

(12) The exercise of the authority contained in subsection (11) is regulations within the meaning of the *Regulations Act*.

**2 (1) Clause 70(6B)(d) of Chapter 293, as enacted by Chapter 20 of the Acts of 2007, is amended by adding “, 278C” immediately after “227” in the sixth line.**

**(2) Subsection 70(6C) of Chapter 293, as enacted by Chapter 20 of the Acts of 2007, is amended by adding “, 278C” immediately after “278” in the third line.**

**3 (1) Subsection 70A(4) of Chapter 293, as enacted by Chapter 24 of the Acts of 1994 and amended by Chapter 11 of the Acts of 1999 and Chapter 42 of the Acts of 2004, is further amended by adding “, 278C” immediately after “227” in the fifth and sixth lines.**

**(2) Subsection 70A(4A) of Chapter 293, as enacted by Chapter 20 of the Acts of 2007, is amended by adding “, 278C” immediately after “227” in the fifth line.**

**4 Chapter 293 is further amended by adding immediately after Section 278B the following Sections:**

278C (1) The Registrar may immediately suspend the driver’s license or privilege of obtaining a driver’s license of any person, without a hearing, if the Registrar is satisfied that the person is not able to safely operate a motor vehicle on a highway based on

- (a) a failed examination of the person’s driving ability ordered pursuant to Section 279 or 280; or
- (b) a medical opinion or the results of a medical examination.

(2) The Registrar shall rescind an order of suspension made pursuant to clause (a) of subsection (1) if

- (a) the Registrar is satisfied, based on the results of a successfully completed examination of the person’s driving ability, that the person is able to safely operate a motor vehicle on a highway; and
- (b) the person has paid the required fees.

(3) In making an order of suspension pursuant to clause (b) of subsection (1), the Registrar may rely on a letter or an oral or written report from a person who is licensed in the Province or any other province of Canada as

- (a) a medical practitioner;
- (b) an optometrist;
- (c) a psychologist;
- (d) a nurse practitioner;
- (e) an occupational therapist; or
- (f) a member of a healthcare profession that is designated by the regulations.

(4) Before making a decision pursuant to clause (b) of subsection (1), the Registrar may refer information that concerns a person's medical condition or a person's medical report or visual screening report to the Medical Advisory Committee or a member of the Committee for an opinion on the ability of the person to safely operate a motor vehicle.

(5) Where the Registrar suspends a person's driver's license or privilege of obtaining a driver's license pursuant to subsection (1), the Registrar shall give the person written notice of

(a) the order of suspension; and

(b) with respect to a suspension ordered pursuant to clause (b) of subsection (1), the review process pursuant to Section 278D.

(6) The Minister may make regulations designating health care professions for the purpose of clause (f) of subsection (3).

(7) The exercise by the Minister of the authority contained in subsection (6) is regulations within the meaning of the *Regulations Act*.

278D(1) Where a person whose driver's license or privilege of obtaining a driver's license is suspended pursuant to clause (b) of subsection (1) of Section 278C provides to the Registrar medical information that was not available or not provided to the Registrar at the time the suspension was ordered, the person may request that the Registrar review whether the order of suspension should be rescinded.

(2) Where a review is requested pursuant to this Section, the Registrar may refer any information that concerns a person's medical condition or a person's medical report or visual screening report to the Medical Advisory Committee or a member of the Committee for an opinion on the ability of the person to safely operate a motor vehicle.

(3) Upon completing a review pursuant to this Section, the Registrar may

(a) rescind the order of suspension; or

(b) where satisfied that there are grounds to continue the suspension, sustain the order of suspension.

(4) Where the Registrar rescinds an order of suspension pursuant to clause (a) of subsection (3), the Registrar shall

(a) reinstate the driver's license or privilege of obtaining a driver's license that was suspended, with or without conditions; and

(b) where a driver's licence was cancelled or surrendered due to the suspension, reissue or return the driver's licence.

(5) The Registrar may impose such conditions as the Registrar deems proper on a driver's license or privilege of obtaining a driver's license reinstated pursuant to this Section.

(6) Subject to subsection (7), the Registrar's decision pursuant to subsection (3) is final and not subject to any further review or appeal.

(7) Where the Registrar sustains an order of suspension pursuant to subsection (3), the Registrar may permit the person who requested the review to request a further review of whether the order should be rescinded if the Registrar is satisfied that there has been a change in a medical condition that affects the ability of the driver to safely operate a motor vehicle.

278E (1) The Medical Advisory Committee or a member of the Committee may provide an opinion concerning a person's information referred to the Committee or member pursuant to Section 278C or 278D even if the Committee or any member of the Committee has already provided an opinion with respect to the same person.

(2) The Registrar is not bound by any opinion of the Medical Advisory Committee or a member of the Committee in making a decision pursuant to Section 278C or 278D.

(3) For greater certainty, any information or opinion provided to the Registrar by the Medical Advisory Committee or a member of the Committee for the purpose of Section 278C or 278D is for the exclusive use of the Registrar and may not be disclosed to any person that it concerns or, subject to subsection (6) of Section 7B, any other person.

278F (1) Where, before the coming into force of this Section, the Registrar has, pursuant to subsection (2) of Section 279, suspended or revoked the driver's license or privilege of obtaining a driver's license of a person whose driver's license or privilege of obtaining a driver's license was suspended pursuant to clause (a), (b), (d), (e) or (f) of subsection (1) of Section 279, the person may, within ninety days of the date this Section comes into force, appeal the decision of the Registrar to the Motor Vehicle Appeal Board.

(2) Where, at the time of or after the coming into force of this Section, the Registrar suspends or revokes the driver's license or privilege of obtaining a driver's license of a person pursuant to subsection (2) of Section 279, the person may, within ninety days of the date of the Registrar's decision pursuant to subsection (2) of Section 279, appeal the decision to the Motor Vehicle Appeal Board.

(3) An appeal pursuant to this Section may be made by

(a) filing the appeal in accordance with this Act and the regulations; and

(b) paying the fee prescribed by the regulations.

(4) In an appeal pursuant to this Section, the Motor Vehicle Appeal Board may consider

(a) the written decision of the Registrar, if any;

(b) any information relied upon by the Registrar in making the decision, including the driving record of the appellant;

(c) submissions from the appellant;

(d) submissions from the Registrar; and

(e) such other information that the Board determines is necessary to make a decision.

(5) In deciding an appeal pursuant to this Section, the Motor Vehicle Appeal Board may

- (a) confirm the suspension or revocation;
- (b) rescind the suspension or revocation;
- (c) vary the suspension, revocation or any conditions for reinstatement required by the Registrar; or
- (d) require that reinstatement of the appellant's driver's license or privilege of obtaining a driver's license be subject to conditions.

(6) Except where the suspension or revocation of a driver's license or privilege of obtaining a driver's license made pursuant to subsection (2) of Section 279 is rescinded pursuant to this Section, a driver's license or privilege of obtaining a driver's license that was suspended or revoked remains suspended or revoked as decided pursuant to subsection (2) of Section 279 or varied pursuant to this Section, as the case may be, until any conditions for reinstatement required pursuant to this Act have been satisfied.

**5 Subsections 279(1) to (2A) of Chapter 293 are repealed.**

**6 Chapter 293 is further amended by adding immediately after Section 279B the following Section:**

279BA(1) A person may appeal the decision of the Registrar made pursuant to Section 279B sustaining an order of suspension made pursuant to Section 279A to the Motor Vehicle Appeal Board by

- (a) filing an appeal in accordance with this Act and the regulations; and
- (b) paying the fee prescribed by the regulations.

(2) The appeal must be filed within thirty days of the date of the Registrar's decision pursuant to Section 279B.

(3) An appeal pursuant to this Section must be conducted by the Motor Vehicle Appeal Board in accordance with this Act and the regulations.

(4) In an appeal pursuant to this Section, the sole issue before the Motor Vehicle Appeal Board is whether it is established to the Board's satisfaction that the person to whom the order of suspension was issued

- (a) operated or had care or control of a motor vehicle as defined in the *Criminal Code* (Canada) having consumed alcohol in such a quantity that the concentration thereof in the person's blood exceeded 80 milligrams of alcohol in 100 millilitres of blood; or
- (b) failed or refused to comply with a demand made on that person pursuant to section 254 of the *Criminal Code* (Canada) in respect of the operation or having care or control of a motor vehicle as defined in that Act.



(5) In an appeal pursuant to this Section, the Motor Vehicle Appeal Board shall consider

(a) any relevant sworn or solemnly affirmed statements and any other relevant information;

(b) the report of the peace officer who issued the order of suspension pursuant to Section 279A;

(c) a copy of any certificate of analysis issued pursuant to section 258 of the *Criminal Code* (Canada) with respect to the occurrence without proof of the identity and official character of the person appearing to have signed the certificate or that the copy is a true copy; and

(d) where an oral hearing was held under Section 279B or this Section, any relevant evidence and information given or representations made at the oral hearing.

(6) In an appeal pursuant to this Section, the Motor Vehicle Appeal Board may consider the status of any criminal charges laid in relation to the occurrence that resulted in the order of suspension pursuant to Section 279A.

(7) In deciding an appeal pursuant to this Section, the Motor Vehicle Appeal Board has the same authority to make an order or take action that the Registrar has pursuant to Section 279B.

**7 Subsection 280(2) of Chapter 293 is amended by adding “or such other person” immediately after “examiner” in the third line**

**8 Clause 291A(13)(b) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by striking out “Registrar” in the third line and substituting “Motor Vehicle Appeal Board”.**

**9 (1) Subsection 291B(1) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by striking out “Registrar” in the last line and substituting “Motor Vehicle Appeal Board”.**

**(2) Subsection 291B(2) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by striking out “Registrar” in the third line and substituting “Motor Vehicle Appeal Board”.**

**(3) Subsection 291B(4) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by striking out “Registrar” in the first line and substituting “Motor Vehicle Appeal Board”.**

**(4) Subsection 291B(5) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by**

**(a) striking out “Registrar” in the first line and substituting “Motor Vehicle Appeal Board”; and**

**(b) striking out “Registrar’s” in the second line and substituting “Board’s”.**

**(5) Subsection 291B(6) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by**

**(a) striking out “Registrar” in the first line and substituting “Motor Vehicle Appeal Board”; and**

**(b) striking out “Registrar” in the second line and substituting “Board”.**

**(6) Subsection 291B(7) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by striking out “Registrar” in the first line and substituting “Motor Vehicle Appeal Board”.**

**10 (1) Subsection 291C(1) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by striking out “Registrar” in the last line and substituting “Motor Vehicle Appeal Board”.**

**(2) Subsection 291C(2) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by striking out “Registrar” in the third line and substituting “Motor Vehicle Appeal Board”.**

**(3) Subsection 291C(4) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by striking out “Registrar” in the first line and substituting “Motor Vehicle Appeal Board”.**

**(4) Subsection 291C(5) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by**

**(a) striking out “Registrar” in the first line and substituting “Motor Vehicle Appeal Board”; and**

**(b) striking out “Registrar’s” in the second line and substituting “Board’s”.**

**(5) Subsection 291C(6) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by**

**(a) striking out “Registrar” in the first line and substituting “Motor Vehicle Appeal Board”; and**

**(b) striking out “Registrar” in the second line and substituting “Board”.**

**(6) Subsection 291C(7) of Chapter 293, as enacted by Chapter 32 of the Acts of 1998, is amended by striking out “Registrar” in the first line and substituting “Motor Vehicle Appeal Board”.**

**11 (1) Subsection 4A(2) of Chapter 5 of the Acts of 1993, the *Freedom of Information and Protection of Privacy Act*, as enacted by Chapter 11 of the Acts of 1999 (Second Session) and amended by Chapter 4 of the Acts of 2004 and Chapter 35 of the Acts of 2008, is further amended by striking out clause (l) and substituting the following clause:**

**(l) subsection (5) of Section 7B, subsection (8) of Section 7C, subsection (6) of Section 98 and subsection (3) of Section 278E of the *Motor Vehicle Act*;**

**(2) The Schedule to Chapter 5, as enacted by Chapter 11 of the Acts of 1999 (Second Session), is amended by striking out “Medical Advisory Committee on Driver Licensing” in the twenty-ninth line.**

**12 (1)** Notwithstanding any other enactment, subject to subsections (2) and (3), subsections 279(1) to (2A) of the Motor Vehicle Act continue to apply as if not repealed by this Act with respect to any order of suspension issued pursuant to subsection 279(1) of the Motor Vehicle Act and in effect immediately before the coming into force of Section 4.

**(2)** Where subsection (1) applies, the Medical Advisory Committee appointed pursuant to Section 7B of the Motor Vehicle Act is deemed to be the medical advisory committee.

**(3)** Where a person’s driver’s license or privilege of obtaining a driver’s license is suspended pursuant to clause 279(1)(a), (b), (d), (e) or (f) of the Motor Vehicle Act, the suspension is in effect immediately before the coming into force of Section 4 and the person has not requested a hearing or opportunity to offer an explanation pursuant to subsection 279(2) of the Motor Vehicle Act before the coming into force of Section 4, the person may only request a hearing or opportunity to offer an explanation pursuant to subsection 279(2) of the Motor Vehicle Act if the request is made within ninety days of the date Section 4 comes into force.

**(4)** Notwithstanding any other enactment, Sections 7C and 279BA of the *Motor Vehicle Act* do not apply with respect to any decision made by Register pursuant to Section 279B of the *Motor Vehicle Act*, whether made before or after the coming into force of Section 5, with respect to any order of suspension issued pursuant to Section 279A of the *Motor Vehicle Act* and in effect immediately before the coming into force of Section 5.

**(5)** Notwithstanding any other enactment, Sections 291A, 291B and 291C of the *Motor Vehicle Act* continue to apply as if not amended by this Act with respect to any order to impound issued pursuant to Section 291A of the *Motor Vehicle Act* and in effect immediately before the coming into force of Sections 7, 8 and 9, or any appeal of such an order.

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

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