

Bill No. 34 of 1955

A BILL TO AMEND THE TESTATORS FAMILY  
MAINTENANCE ACT

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NOTE

This Bill amends *The Testators Family Maintenance Act*, being chapter 12 of the Statutes of Alberta, 1947.

The Act prescribes the procedure whereby a dependant of a testator for whose support adequate provision is not made in the will, may apply to a judge of the Supreme Court to have the provisions of the will varied so as to make adequate provision for his support. By this Bill the scope of the Act is being enlarged to enable a dependant of an intestate to apply to a judge to vary the rules of distribution upon intestacy if their application would result in the dependant not receiving adequate provision for his support.

All the provisions of the Act which previously applied only to the estates and dependants of persons dying testate are being applied equally to the estates and dependants of persons dying intestate. The only difference is that the term "dependant" includes the husband of a testatrix but not the husband of a woman dying intestate.

As the scope of the Act is being extended its title is being changed to *The Family Relief Act*.

This Bill comes into force upon assent.

J. W. RYAN,  
*Acting Legislative Counsel.*

*(This note does not form any part of the Bill but is offered in explanation of its provisions.)*

# BILL

No. 34 of 1955

An Act to amend The Testators Family Maintenance Act

(Assented to , 1955)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Testators Family Maintenance Act*, being chapter 12 of the Statutes of Alberta, 1947, is hereby amended.

2. The long title is amended by adding immediately after the word "Testators" the words "and Intestates". Long title amended

3. Section 1 is amended by striking out the words "*The Testators Family Maintenance Act*" and by substituting the words "*The Family Relief Act*". Section 1 amended

4. Section 2 is amended Section 2 amended

(a) as to clause (b)

(i) by striking out the word "testator", wherever it occurs, and by substituting the word "deceased",

(ii) by striking out the word "testator's" and by substituting the word "deceased's",

(b) by adding immediately after clause (b) the following new clause:

"(bb) 'deceased' means a testator or a person dying intestate;" "deceased"

(c) by striking out clause (c) and by substituting the following:

"(c) 'dependant' means

"dependant"

"(i) the widow of the deceased,

"(ii) a child of the deceased who is under the age of nineteen years at the time of the deceased's death,

"(iii) a child of the deceased who is over the age of eighteen years at the time of the deceased's death, and unable by reason of mental or physical disability to earn a livelihood,

"(iv) the husband of a testatrix;"

(d) by striking out clause (d).

Section 4  
amended

**5. Section 4 is amended**

- (a) by striking out subsection (1) and by substituting the following:

“4. (1) Where a person

“(a) dies testate without making in his will adequate provision for the proper maintenance and support of his dependants or any of them, or

“(b) dies intestate and the share under *The Intestate Succession Act* of the intestate’s dependants or of any of them in the estate is inadequate for their proper maintenance and support,

a judge on application by or on behalf of the dependants or any of them may in his discretion, notwithstanding the provisions of the will or *The Intestate Succession Act* order that such provision as he deems adequate shall be made out of the estate of the deceased for the proper maintenance and support of the dependants or any of them.”,

- (b) as to subsection (3)

(i) by striking out the word “testator’s” and by substituting the word “deceased’s”,

(ii) by striking out the word “testator” and by substituting the word “deceased”,

- (c) as to subsection (4) by striking out the word “testator’s” and by substituting the word “deceased’s”,

- (d) by striking out subsection (6) and by substituting the following:

“(6) Where a testator dies intestate as to part of his estate, the judge may make an order affecting either the part of the estate as to which he died testate or the part as to which he died intestate or as to both such parts.”.

Section 6  
amended

**6. Section 6, subsection (3) is amended**

- (a) by striking out the word “either”,

- (b) by adding immediately after the word “executor” the words “or administrator”.

Section 8  
amended

**7. Section 8, clause (a) is amended by striking out the words “or devisee” and by substituting the words “, devisee or beneficiary under an intestacy”.**

Section 9  
amended

**8. Section 9 is amended**

- (a) by striking out the word “testator” and by substituting the word “deceased”,

- (b) by striking out the word “testator’s” and by substituting the word “deceased’s”.

Section 11  
amended

**9. Section 11 is amended by striking out the words “the will shall have effect as from the testator’s death” and by substituting the words “the order has effect as from the**

date of the deceased's death, and the will, if any, has effect from that date".

**10. Section 13 is amended**

Section 13  
amended

- (a) as to subsection (1) by striking out the word "testator" and by substituting the word "deceased",
- (b) as to subsection (4)
  - (i) by adding immediately after the word "executor's" the words "or administrator's",
  - (ii) by adding immediately after the word "probate" the words "or administration".

**11. Section 14 is amended**

Section 14  
amended

- (a) by striking out the word "testator's", wherever it occurs, and by substituting the word "deceased's",
- (b) by striking out the word "testator" and by substituting the word "deceased",
- (c) by striking out the words "that age" and by substituting the words "the age of eighteen years".

**12. Section 15 is amended**

Section 15  
amended

- (a) as to subsection (1) by striking out the words "with the will annexed",
- (b) as to subsection (3) by striking out the word "testator", wherever it occurs, and by substituting the word "deceased".

**13. Section 17 is amended**

Section 17  
amended

- (a) as to subsection (1)
  - (i) by striking out the words "with the will annexed",
  - (ii) by adding immediately after the words "the executor" the word ", administrator",
  - (iii) by striking out the word "testator" and by substituting the word "deceased",
  - (iv) by striking out the words "under the will",
- (b) as to the proviso to subsection (1)
  - (i) by adding immediately after the words "an executor" the word ", administrator",
  - (ii) by striking out the words "named as beneficiaries in the will" and by substituting the words "who are beneficiaries",
- (c) as to subsection (2) by adding immediately after the word "executor" the word ", administrator".

**14. Section 18 is amended by adding immediately after the word "executor", wherever it occurs, the word ", administrator".**

Section 18  
amended

**15. Section 20 is amended by striking out the words "with the will annexed" wherever they occur.**

Section 20  
amended

**16. This Act comes into force on the day upon which it is assented to.**

Coming into  
force

THIRD SESSION  
TWELFTH LEGISLATURE  
4 ELIZABETH II  
1955

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**BILL**

An Act to amend The Testators  
Family Maintenance Act

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Received and read the

First time.....

Second time.....

Third time... ..

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HON. MR. MAYNARD

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