

1968 Bill 8

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First Session, 16th Legislature, 17 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 8

An Act to amend The Wills Act, 1960

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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1968

An Act to amend The Wills Act, 1960

(Assented to _____, 1968)

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

1. *The Wills Act, 1960* is amended by striking out section 33 and by substituting the following:

33. Except when a contrary intention appears by the will, where a person dies in the lifetime of a testator either before or after the testator makes the will and that person

(a) is a child or other issue or brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his death, and

(b) leaves issue any of whom is living at the time of the death of the testator,

the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if he had died intestate and without debts immediately after the death of the testator, except that the surviving spouse of that person is not entitled to receive a preferential share of \$20,000 as provided under section 3 of *The Intestate Succession Act*.

2. Section 1 only applies with respect to a devise or bequest in a will made on or after June 1st, 1968.

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

Explanatory Notes

1. This Bill amends chapter 118 of the Statutes of Alberta, 1960. Section 33 presently reads:

33. Except when a contrary intention appears by the will, where a person dies in the lifetime of a testator either before or after the testator makes the will and that person

(a) is a child or other issue or a brother or sister of the testator to whom, either as an individual or as a member of a class, is devised or bequeathed an estate or interest in real or personal property not determinable at or before his death, and

(b) leaves issue any of whom is living at the time of the death of the testator,

the devise or bequest does not lapse, but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible if he had died intestate and without debts immediately after the death of the testator.

A will only becomes operative upon the death of the testator making it and, ordinarily, a provision in the will of a living person leaving property to a beneficiary will become void and ineffective if that beneficiary dies before the testator. The purpose of section 33 is to provide that in certain cases, such as where a parent wills property to a child who dies before the parent, the testamentary gift is not to become void if there are grandchildren but is to operate to share the gift among those persons who would share in the child's estate if the child had died without leaving a will of his own. Under The Intestate Succession Act before 1964 these persons would have been the grandchildren and the surviving spouse of the child, if any. But in 1964 The Intestate Succession Act was amended to provide that the surviving spouse was to receive a share of up to \$20,000 of her deceased spouse's estate before anyone else became entitled to a share. This change also resulted in an unintended change in the manner in which a gift was to be shared under section 33 of The Wills Act so that in many instances the surviving spouse would receive all the gift and the grandchildren would receive no share of their grandparents' estate. The amendment made by this Bill will change the effect of section 33 back to what it was before 1964.

2. The amendment is not to alter the effect of existing wills.