

1970 Bill 56

Third Session, 16th Legislature, 19 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ~~ALBERTA~~

BILL 56

An Act to amend The Intestate Succession Act

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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1970

An Act to amend The Intestate Succession Act

(Assented to _____, 1970)

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

1. *The Intestate Succession Act* is hereby amended.

2. Sections 15 and 17 are struck out and the following section is substituted:

15. For the purposes of this Act, an illegitimate child shall be treated as if he were the legitimate child of his mother.

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

Explanatory Notes

1. This Bill amends chapter 161 of the Revised Statutes.

2. Sections 15 and 17 presently read:

15. Illegitimate children and their issue

(a) shall inherit from the mother as if the children were legitimate, and

(b) shall inherit through the mother, if dead, any real or personal property that she would have taken, if living, by gift, devise or descent from any other person.

17. If an intestate, being an illegitimate child, dies leaving no widow, or issue, his estate shall go to his mother, if living, but if the mother is dead his estate shall go to the other children of the same mother in equal share, and if any child is dead the children of the deceased child shall take the share their parent would have taken if living, but where the only persons entitled are children of deceased children of the mother, they shall take per capita.

Sections 15 and 17 are the same as those in the original Uniform Intestate Succession Act adopted in 1925 by the Conference of Commissioners on Uniformity of Legislation in Canada. In 1958 the Conference amended its Uniform Act to replace these sections with the section 15 to be enacted by this Bill. The Conference amended its Act as a result of the decision in a Saskatchewan case *Re Carlson* (1957), 11 D.L.R. (2d) 485, which demonstrated a flaw in the old sections in that they covered succession from the illegitimate to the mother and from the mother to the illegitimate but did not cover cases where the illegitimacy is higher up the family tree than the intestate himself.

The new section 15 corresponds to a similar rule in section 34 of The Wills Act, 1960 which reads:

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“34. In the construction of a will, except when a contrary intention appears by the will, an illegitimate child shall be treated as if he were the legitimate child of his mother.”