

Bill No. 34 of 1944.

A BILL TO AMEND THE ESTATES OF THE  
MENTALLY INCOMPETENT ACT

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NOTE.

This Bill amends *The Estates of the Mentally Incompetent Act*, chapter 23, R.S.A., 1942.

The amendment to section 13 is merely to provide a definite procedure whereby a committee may voluntarily apply to the Court to have its accounts passed.

Section 23 of the Act deals with persons found to be incapable through mental infirmity of managing their affairs and the amendment makes all the provisions of Part I apply thereto excepting those sections dealing with a declaration of unsoundness of mind. It also provides that the Court may appoint one or more persons or the Administrator of Estates as committee in such case.

The amendment to section 26 is to make clear the duty of the Administrator to accept appointments made by the Court and section 27 (2) is merely to make the wording of subsections (2) and (3) correspond.

The amendment to section 30 is to clarify the powers of the Administrator and make the same sufficiently wide to cover the problems arising in administration; the powers set out in sections 16 and 17 are those which a committee of a person of unsound mind has or may be given by the Court.

The amendment to section 34 is to cover cases where money is in the hands of the Administrator and the patient has left the institution and has not been heard of for seven years. The rights of the patient or his heirs to the money is protected by the existing subsection (2).

The amendment to section 36 provides that the Administrator may apply to the appropriate Court for letters of administration to a deceased patient's estate and will be entitled to obtain the same. This does not interfere with the existing power of the Lieutenant Governor in Council to make the appointment. The amendment also provides for the Administrator in certain circumstances taking administration to estates in which the patient is interested.

The amendment to section 39 adds seizures and extrajudicial proceedings to the proceedings requiring leave of a judge before they can be taken against a mentally incompetent person or his estate. It also deletes the necessity of the leave of the Court being obtained for commencement of proceedings by a committee.

W. S. GRAY,  
*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 1944.

An Act to amend The Estates of the Mentally Incompetent Act.

(Assented to \_\_\_\_\_, 1944.)

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

**1.** *The Estates of the Mentally Incompetent Act*, being chapter 23 of the Revised Statutes of Alberta, 1942, is hereby amended as to section 13 by adding at the end thereof the following new subsection:

“(3) A committee may at any time voluntarily file his accounts with the Clerk of the Court and apply to the Court by motion in chambers upon such notice as a judge may direct for an order passing his accounts and for such further or other order or directions as the circumstances may require.”

**2.** The said Act is further amended as to section 23 by striking out subsection (2) thereof and by substituting therefor the following new subsections:

“(2) In any such case the Court may, subject to the provisions of Part III, commit the custody of the person and the custody and management of his estate or the custody and management of his estate only to a committee consisting of one or more persons and the provisions of Part I, excepting sections 7, 8, 9, 10 and subsection (2) of section 11, shall *mutatis mutandis* apply thereto to the same extent as if such person had been declared to be of unsound mind.

“(3) The Court may in any such case commit the custody and management of the estate of such person to the Administrator of Estates of the Mentally Incompetent who shall thereupon have with respect to such estate all the powers that he has under Part III with respect to the estate of a mentally incompetent person.”

**3.** The said Act is further amended as to section 26 by adding at the end of subsection (1) thereof the following words: “or by order of the Court.”

**4.** The said Act is further amended as to section 27 by striking out the last two lines of subsection (2) thereof, and by substituting therefor the following: “sell, dispose of or otherwise deal with the real and personal estate or any part thereof as he may think fit.”

5. The said Act is further amended as to section 30 by striking out the same and by substituting therefor the following:

“30.—(1) The Administrator while acting as committee of the estate of a mentally incompetent person shall have power to manage, handle, administer, sell, dispose of or otherwise deal with the estate of such person as fully and to the same extent as could be done by such person if mentally competent.

“(2) Without restricting in any way the generality of the powers given to the Administrator by subsection (1), his powers shall include the power to do the things set forth in sections 16 and 17.”

6. The said Act is further amended as to section 34,—

(a) by inserting immediately after the word “Act,” where the same occurs in the second line of subsection (1) thereof, the word “if,” and by striking out the words “shall if it” where the same occur in the fifth line of the same subsection:

(b) by adding immediately after subsection (1) thereof the following new subsection:

“(1a) Any money or other property in the hands of the administrator which forms part of the estate of a person whose estate the administrator is or at any time was administering and who has not been heard of by the administrator for a period of seven years and who after reasonable inquiry cannot be located, shall in the case of money, be paid to the Provincial Treasurer, and in the case of other property, be sold and converted into money and the proceeds paid to the Provincial Treasurer and such money and proceeds of other property shall thereupon form part of the General Revenue Fund of the Province.”

7. The said Act is further amended as to section 36 by striking out the same and by substituting therefor the following:

“36.—(1) When a person whose estate the administrator is administering dies, the administrator shall retain possession of the estate of the deceased and pending a grant of probate or letters of administration or the appointment of the administrator by the Lieutenant Governor in Council shall continue to have and exercise with respect to the estate the powers had and exercised while the deceased was alive.

“(2) The administrator may apply to the Court having jurisdiction for letters of administration or letters of administration with will annexed with respect to the estate of the deceased, and on complying with the practice and procedure of the Court in so far as applicable, he shall be entitled to such letters in priority to the next-of-kin of the deceased or any other person interested in the deceased's estate.

“(3) The Lieutenant Governor in Council may in any case where it is deemed expedient so to do, appoint the administrator to be administrator of the estate of the deceased, and the administrator upon appointment shall have all the powers and duties of an administrator appointed by the court with respect to the estate.

“(4) The administrator shall forthwith, upon receipt of an Order in Council containing the appointment, file in the District Court with the Clerk of the District Court for the judicial district in which the mentally incompetent person had his place of residence as well as in every judicial district where any property of the mentally incompetent person, real or personal, is situated, a duly certified copy thereof, and the Clerk shall file the copy among his records without fee, and upon the filing of the same with the Clerk of the District Court for a judicial district, no grant of probate or letters of administration shall thereafter be issued by that Court unless and until the appointment of the administrator by the Lieutenant Governor in Council has been rescinded.

“(5) Where the administrator is administering the estate of a person who,—

“(a) is a beneficiary under the will of a deceased person and there is no executor or the executor has renounced probate; or

“(b) is entitled to the estate or a portion of the estate of a deceased intestate and there is no administrator of the estate,—

The administrator may apply to the Court having jurisdiction for letters of administration or letters of administration with will annexed with respect to the estate in question and upon complying with the practice and procedure of the Court in so far as applicable he shall be entitled to such letters in priority to the next-of-kin of the deceased or any other person interested in his estate.”

**8.** The said Act is further amended as to section 39 by striking out the words “by or,” where the same occur in the second line thereof, and by substituting therefor the words “or seizure by the sheriff or extra-judicial proceeding.”

**9.** This Act shall come into force on the day upon which it is assented to.

No. 34.

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FOURTH SESSION  
NINTH LEGISLATURE  
8 GEORGE VI  
1944

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**BILL**

An Act to amend The Estates of the  
Mentally Incompetent 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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A Shnitka, King's Printer  
1944