

ADMINISTRATION AMENDMENT BILL

EXPLANATORY NOTE

1. Under the existing law a beneficiary under a will and likewise a donee of a gift made by a living person may disclaim the benefit or gift, but a person who becomes entitled to property on the intestacy of another has no clear satisfactory right to disclaim the property.

2. *Clause 2* of the Bill makes provision for such a right, and provides that property which is so disclaimed shall devolve as if the person disclaiming had died immediately before the intestate person and had left only such issue as he would have left if he had actually died then. The definition of the term "intestate" in section 2 of the Administration Amendment Act 1944 makes the provision apply to partial intestacies as well as to total intestacies. The clause requires that the disclaimer shall relate to the whole of the benefit which the person disclaiming takes under New Zealand law in the estate of the intestate person. In so doing it follows the analogy of the existing law regarding disclaimer by a residuary beneficiary under a will, and prevents a successor from disclaiming the responsibility for onerous property in the estate without having the estate administered under Part IV of the Administration Act 1908. There would be considerable scope for evasion of gift and death duties if a successor could disclaim part of the benefit which he takes on intestacy. Every such disclaimer must be made without consideration and before the successor enters into enjoyment of his inheritance or in any way disposes of it. The Supreme Court is empowered to authorize disclaimers under the new provision on behalf of infants, convicts, and persons of unsound mind. Disclaimers of property taken on intestacy must be made within one year after the first grant of administration in New Zealand or within such longer period as the Supreme Court may allow, and must be made during the lifetime of the successor who is disclaiming. Disclaimers of property taken on intestacy are to be irrevocable but the successor who disclaims is not debarred from claiming under the Family Protection Act 1908. A disclaimer must not be worded as an assignment, and cannot be made while the successor is bankrupt.

3. *Clause 3* of the Bill provides that, for the purposes of the Bankruptcy Act 1908, and of any Act or rule of law relating to the protection of creditors, a disclaimer of an interest taken either under a will or on intestacy is to be deemed to be a transfer of the property disclaimed. This will enable creditors to treat the disclaimer as an act of bankruptcy and will make it void in certain circumstances—*e.g.*, under section 75 of the Bankruptcy Act 1908, and under the Statute 13 Elizabeth, ch. 5. If the successor is not bankrupt and the administrator has no reason to believe that the successor is about to become bankrupt or that the disclaimer is void or is about to become void, the administrator may distribute disclaimed property as if there were no possibility of the disclaimer becoming void by reason of its being deemed to be a transfer of the property.

Hon. Mr. Webb

ADMINISTRATION AMENDMENT

ANALYSIS

Title.	3. Effect of bankruptcy on disclaimer on intestacy or under a will; and right of administrator to distribute.
1. Short Title.	
2. Right of successor on intestacy to disclaim.	

A BILL INTITULED

AN ACT to amend the Administration Act 1908.

Title

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Administration Amendment Act 1951, and shall be read together with and deemed part of the Administration Act 1908 (hereinafter referred to as the principal Act).

Short Title.

See Reprint of Statutes, Vol. III, p. 128

2. (1) Subject to the provisions of this section, where a successor has become entitled under the principal Act to an interest as a beneficiary in the whole or any part of the real and personal property as to which any person has died intestate,—

Right of successor on intestacy to disclaim.

(a) The successor may, by deed delivered to the intestate person's administrator, disclaim that interest if at the date of the disclaimer he has attained the age of twenty-one years and is of sound mind and is not a convict within the meaning of section fifty-two of the Prisons Act 1908:

Ibid., Vol. VI, p. 984

See Reprint
of Statutes,
Vol. VI, p. 984

- (b) The Supreme Court may, on motion in that behalf, by order, disclaim the interest on behalf of the successor or authorize the disclaimer of the interest by or on behalf of the successor if at the date of the disclaimer the successor is a convict within the meaning of section fifty-two of the Prisons Act 1908 or has not attained the age of twenty-one years or is not of sound mind. 5
- (2) No disclaimer under this section shall be valid unless— 10
- (a) The successor is living when the disclaimer is made; and
- (b) The disclaimer relates to the whole of the successor's interest as a beneficiary under the principal Act in the real and personal property as to which the intestate person has died intestate, including property which any other person has disclaimed under this section; and 15
- (c) The disclaimer is made within one year after the date of the first grant in New Zealand of administration in respect of the estate or will of the intestate person (whether that grant was made before or after the commencement of this Act) or within such extended period as may be allowed by the Supreme Court on motion in that behalf. 25
- (3) No disclaimer under this section shall be valid if— 30
- (a) The successor has entered into enjoyment of the whole or any part of the interest to which he has become entitled as aforesaid; or
- (b) The successor has transferred, assigned, mortgaged, settled, or otherwise disposed of that interest or of any part thereof or of any property which would include that interest or any part thereof if it were not disclaimed, or has covenanted or agreed to do any such thing; or 35
- (c) There is any valuable consideration for the disclaimer; or 40

(d) The disclaimer provides for any assignment of the disclaimed interest or in any manner provides who is to be entitled to that interest; or

5 (e) The successor is bankrupt when the disclaimer is made.

(4) The following provisions shall apply to every disclaimer under this section:—

(a) The disclaimer shall be irrevocable:

10 (b) The disclaimer shall not affect the right of the successor to apply to the Court under the Family Protection Act 1908 for provision out of the estate of the intestate person.

See Reprint
of Statutes,
Vol. III, p. 292

15 (5) Where a disclaimer which complies with all the requirements of this section has been made by or on behalf of any successor and the disclaimer is not void and does not become void by reason of its being deemed under section *three* of this Act to be a transfer of the disclaimed interest—

20 (a) The property as to which the intestate person has died intestate shall be distributed, and death duties in his estate shall be assessed, as if the successor had died immediately before the intestate person leaving only such issue (if any) as the successor would have left if he had died immediately before the intestate person:

25 (b) The successor shall be deemed for all purposes neither to have become entitled to nor to have disposed of the disclaimed interest or any part thereof.

30 (6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section.

35 (7) Every disclaimer under this section shall be deemed to be made at the first point of time when everything has been done in respect of the disclaimer which is necessary to comply with the requirements of this section and of any order of the Supreme Court which relates to the disclaimer and is made under this section.

Effect of
bankruptcy on
disclaimer on
intestacy or
under a will;
and right of
administrator
to distribute.

See Reprint
of Statutes,
Vol. I, p. 466

3. (1) Where a successor disclaims the interest as a beneficiary to which he is entitled under the principal Act in any real or personal property as to which any person has died intestate, or disclaims any interest as a beneficiary in any real or personal property to which he is entitled under the will of a deceased person, then, for the purposes of the Bankruptcy Act 1908 and of any other Act or rule of law relating to the protection of creditors,—

(a) The successor shall be deemed to have accepted the disclaimed interest; and

(b) The disclaimer shall be deemed to be a transfer of the disclaimed interest by the successor to the person or persons who become entitled thereto in consequence of the disclaimer.

(2) Where any such successor has disclaimed any such interest in any property and there is no possibility of the disclaimer being void otherwise than by reason of its being deemed to be a transfer of the disclaimed interest, the deceased person's administrator may distribute the disclaimed interest or any part of it as if there were no possibility of the disclaimer being or becoming void by reason of its being deemed to be a transfer of the disclaimed interest if, at the date of the distribution,—

(a) The successor is not bankrupt; and

(b) The administrator has no reason to believe that the successor is about to become bankrupt; and

(c) The administrator has no reason to believe that the disclaimer is void or is about to become void by reason of its being deemed to be a transfer of the disclaimed interest.

(3) No action shall lie against any such administrator by reason of his distributing any disclaimed interest as aforesaid or by reason of his having failed to make any inquiry as to whether the successor was about to become bankrupt or as to whether the disclaimer was void or about to become void by reason of its being deemed to be a transfer of the disclaimed interest; but nothing in this subsection or in subsection *two* of this section shall affect any right which any person may have to follow and recover any property to which the disclaimer relates.