

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,
7th October, 1910.

Hon. Dr. Findlay.

INALIENABLE LIFE ANNUITIES.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title.</p> <p style="padding-left: 40px;"><i>General.</i></p> <p>2. Interpretation.</p> <p>3. Annuity policies.</p> <p>4. Contracts for annuities.</p> <p>5. Provisions to be contained in policies.</p> <p>6. Crown bound by Act.</p> <p style="padding-left: 40px;"><i>Inalienable Life Annuities.</i></p> <p>7. Inalienable annuities.</p> <p>8. For one life only.</p> <p>9. Rights of annuitant.</p> <p>10. Protection from creditors and alienees.</p> <p>11. Limit of protection.</p> | <p>12. Limit of value of annuities held by one person.</p> <p>13. Provisions against exceeding limit.</p> <p>14. Requirements of application.</p> <p>15. Penalty for false statement.</p> <p>16. Incapacity of annuitant.</p> <p>17. Administration by Public Trustee.</p> <p>18. Public Trustee to act.</p> <p>19. Liability to bankruptcy law.</p> <p>20. Protection of wife or child.</p> <p>21. Special provisions as to legacies, &c.</p> <p style="text-align: center;"><i>Jurisdiction.</i></p> <p>22. Jurisdiction exercised by originating summons.</p> |
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A BILL INTITULED

AN ACT to provide for the Creation and Issue of Inalienable Life Annuities. Title.

5 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 Inalienable Life Annuities Act, 1910. Short Title.

General.

10 2. The expression "company" in this Act shall include every company coming within the definition of that expression in section two of the Life Insurance Companies Act, 1908, and shall also be deemed to include the Government Insurance Commissioner as defined by the Government Life Insurance Act, 1908; and, with respect to all

15 matters to be transacted under this Act, every company issuing life annuities, including the Commissioner, shall, subject to the special provisions of this Act, have all the powers and immunities respectively assigned to companies and the Commissioner by the said respective Acts; and all annuities created and issued under this

20 Act shall, subject to the special provisions of this Act, be deemed to be annuities issued under and subject to the provisions of the said respective Acts; and all premiums paid in respect of such annuities shall form part of the funds to be administered in accordance with the powers of the company or the Commissioner respectively issuing

25 the same, and in accordance with the said respective Acts. Interpretation.

Annuity policies.

3. Annuities created under the provisions of this Act shall be secured by annuity policies, which shall be specially designated "inalienable life annuity policies"; and the designation of any annuity policy as a policy to be issued hereunder shall be determined by the terms of the application for such policy, and shall appear on the face of the policy. 5

Contracts for annuities.

4. With respect to such annuities the following provisions shall apply :—

(a.) Such annuities may be purchased for cash or under any contract for the payment therefor by instalments, with or without provision for the return in whole or in part of the premiums to the applicant or his nominee in any stated event. 10

(b.) Any such policy may be issued upon terms that payment of the life annuity thereby secured may commence at any future or deferred date. 15

(c.) Unincumbered life annuity policies now in existence or hereafter created may be exchanged for annuity policies under this Act, by or with the consent of all persons entitled to deal with the same. 20

(d.) The special mention in this section of the foregoing powers and provisions shall not derogate from the specification of powers vested in the company or the Commissioner by the Life Insurance Act, 1908, and the Government Life Insurance Act, 1908, respectively. 25

Provisions to be contained in policies.

5. Every policy issued under the provisions of this Act shall contain only such provisions as may be approved by the Governor in Council.

Crown bound by Act.

6. The Crown shall be bound by the provisions of this Act.

Inalienable Life Annuities.

Inalienable annuities.

7. It shall be lawful for any company to issue, and for any person to apply for and acquire for himself or his nominee, an inalienable life annuity or inalienable life annuities, subject to the provisions of this Act. 30

For one life only.

8. An inalienable life annuity policy shall only be issued in respect of the life of one person, who shall be named therein, and shall be called the annuitant. 35

Rights of annuitant.

9. The annuitant shall, irrespective of the origin of the contract under which such annuity is issued, be absolutely entitled to receive, recover, and retain the whole of the annuity thereby secured, subject only to the provision hereinafter appearing with reference to the Public Trustee's remuneration, and to the provisions of sections *thirteen, sixteen, seventeen, eighteen, nineteen, and twenty-one* hereof with reference to costs. 40

Protection from creditors and alienees.

10. An inalienable life annuity is a personal provision for the annuitant, in which no other person can acquire an interest; and no such policy shall be seized, attached, or otherwise charged or alienated in whole or in part by any judgment creditor, assignee in bankruptcy, or other assignee; and no mortgage or assignment thereof or charge thereon, or on any part or instalment thereof, whether purporting to be made voluntarily or claimed in respect of any statutory charge or 45 50

assignment, or any judgment or other means of alienation, shall have any validity.

5 11. Inalienable life annuities held or purporting to be held by any person shall, to the extent of one hundred and four pounds only, be held to be protected under the provisions of this Act, and such annuities to that extent shall be deemed to be annuities protected by subsection three of section sixty-six of the Life Insurance Act, 1908.

Limit of protection.

10 12. Subject to any express provision to the contrary herein contained, no person shall acquire or hold any annuity or annuities as an inalienable life annuity or inalienable life annuities to any amount exceeding one hundred and four pounds per annum, and if 15 any person shall acquire any annuity or annuities purporting to be an inalienable life annuity or inalienable life annuities beyond that amount the excess beyond one hundred and four pounds per annum shall not be protected by the provisions of this Act or be subject thereto, save the provisions of the *next succeeding* section hereof, but in such case the Supreme Court shall in any proceeding, whether 20 under the *next succeeding* section hereof or otherwise, unless there is some reason to the contrary, give effect to any election the holder may make as to which policy or policies so held by him shall be deemed to be an inalienable life policy or inalienable life policies.

Limit of value of annuities held by one person.

25 13. Whenever it shall appear that any person has become, or by any contract is entitled or contingently entitled to become, the annuitant under an inalienable life annuity policy or inalienable life annuity policies to the extent of more than one hundred and four pounds per annum, it shall be lawful for any company which has issued any policy under which he is or may become the annuitant, and it shall be the duty of the company which has issued or contracted to issue the last of such policies, to apply to the Supreme 30 Court to order, and the said Court shall have power to order, that any such policy or policies shall be called in and surrendered, to the intent that the excess above one hundred and four pounds per annum may be expressed in and secured by an annuity policy not subject to the provisions of this Act, and, if necessary, an 35 exchanged inalienable life annuity policy issued for the proper amount; and any such company shall have the power, by like means, to compel the annuitant to surrender or exchange any policy issued by it without any steps being taken to compel it so to do, so long as the annuitant is or purports to be entitled to hold 40 in virtue of existing policies any inalienable life annuity presently current or to arise in the future to a greater extent than one hundred and four pounds; and in like manner the Supreme Court may make such an order upon the application of the holder of any 45 such policy or policies, or any judgment creditor of, or person claiming under, such holder; and in any of the aforesaid cases the said Court shall determine which of his annuities shall be exchanged in whole or in part, and, in case it shall order the costs of the summons and order to be borne by him, it may order the same to be charged on the exchanged annuity or annuities:

Provisions against exceeding limit.

50 Provided that this section shall not be deemed to restrict the jurisdiction of the Supreme Court.

Requirements of application.

14. There shall be contained in or annexed to every application for an inalienable life annuity a statutory declaration by the applicant giving the true name of the proposed annuitant, and setting forth the inalienable life annuities already held by the proposed annuitant, and the names of the companies which have issued the same, to the best of the knowledge, information, and belief of the applicant, or declaring that to the best of his knowledge, information, and belief the proposed annuitant holds none ; and in such statutory declaration the applicant shall state whether the information therein contained is derived in whole or in part from the proposed annuitant.

Penalty for false statement.

15. If any such declaration is in any material particular false to the knowledge of the party making the same, such party shall be deemed to have committed an offence within section one hundred and thirty-three of the Crimes Act, 1908.

Incapacity of annuitant.

16. Whenever the holder of an inalienable life annuity policy shall in the opinion of the Supreme Court be insane or be unfit to have charge of his affairs, or whenever he shall have become bankrupt or insolvent in New Zealand or elsewhere, or have made an assignment of his property or any part thereof for the benefit of his creditors, or shall have suffered any execution or charging order to have issued against his lands or goods, or shall have become subject to the judgment or process of any foreign Court, whereby any of his property may be liable to be alienated, or shall have attempted to alienate or charge any such inalienable life annuity, the Supreme Court may, on the application of the spouse, parent, grandparent, brother, sister, child, or grandchild of the annuitant, or on the application of the Public Trustee, make an order vesting the same in the Public Trustee or giving the Public Trustee supervision thereof, in such terms as the said Court shall think fit ; and may thereafter or at any time discharge or vary such order ; and in and by such or any subsequent order the said Court may fix the remuneration payable to the Public Trustee for receiving, disbursing, and supervising the same, and the costs incurred by him, or any party to the proceedings.

Administration by Public Trustee.

17. Whenever such annuitant has become insane or unfit to have charge of his affairs, and his inalienable life annuity has for that reason been vested in the Public Trustee, or placed under his supervision, the same shall be administered for his benefit in such manner as the Public Trustee shall, subject to any direction the Court may give, think best.

Public Trustee to act.

18. It shall be the duty of the Public Trustee, when he shall have reason to suspect that an inalienable life policy has become liable to be vested in him or placed under his supervision, and shall have reason to think that neither the annuitant nor any relation of the classes mentioned is prepared to make such an application, to inquire into the circumstances ; and, if he thinks fit, he may make such application, and in any case under this or the *two foregoing* sections his costs shall be ascertained by the order and paid out of the annuity in such manner as the Supreme Court shall direct.

Liability to
bankruptcy law.

19. Any inalienable life annuity granted to the applicant as holder, or which has formed the subject of a gift by him without valuable consideration to persons other than those in the *next succeeding* section hereof mentioned, shall remain liable to be vested
5 in the Official Assignee in Bankruptcy, and to be dealt with as part of the estate of the debtor by order of a Court having jurisdiction in bankruptcy, if the applicant shall be adjudged a bankrupt within three years from the date of the first or only payment of any premium in respect thereof :

10 Provided that if any such Court shall be of opinion that at the time when the debtor applied for such annuity he was in such a position that he ought not to be held to have had his future bankruptcy in view in applying for the same, such Court may declare the same exempt in whole or in part from the operation of this section :

15 Provided nevertheless that, in the circumstances lastly hereinbefore described, if such Court shall be of opinion that any premium or premiums has or have been paid out of the debtor's estate when he had reason to apprehend that he would become bankrupt, such Court may make such order charging such premiums or premium on
20 the said annuity, and ordering payment thereof out of such annuity as it shall deem just and equitable.

20. No inalienable life annuity purchased on behalf of the wife or child of any such debtor shall be liable to be dealt with under the foregoing section, unless such Court shall determine and adjudge
25 that the purchase of the same was actually fraudulent on the part of the debtor.

Protection of wife
or child.

21. The following provisions with reference to legacies, testamentary exercise of powers of appointment and trusts shall have effect :—

Special provisions
as to legacies, &c.

30 (a.) Whenever under or by force of the provisions of any will or codicil made after the passing of this Act any person shall become entitled to have any sum or amount of money invested in an annuity for his or her life, such sum or amount shall, to the extent required to produce an annuity
35 of one hundred and four pounds per annum, unless the testator shall have expressed a contrary intention, or unless or to the extent to which the Supreme Court shall otherwise order, be invested in an inalienable life annuity.

40 (b.) In any such case the person so entitled shall not hereafter be entitled to have such sum or amount paid to him, but such sum or amount shall, unless the testator shall have expressed a contrary intention, or unless or to the extent
45 to which the Supreme Court shall otherwise order, be invested by the executor, administrator, or trustee as he is directed or empowered by the will or codicil to invest the same, but in an inalienable life annuity.

50 (c.) Whenever by the term of any such will or codicil an annuity is so settled or is directed to be so settled upon or in favour of a legatee, appointee, or annuitant as to be inalienable, or to be incapable of being transferred, charged, or otherwise alienated without forfeiture or loss by any act or default of the legatee, appointee, or annuitant, or

is incapable of being seized, alienated, or affected by any creditor or other person, then the sum or amount to be invested in such annuity may, subject to the provisions of paragraph (e) hereof, be invested in the purchase of an inalienable life annuity, and in such case the same shall not be subject to the limit prescribed by sections *eleven* and *twelve* hereof, or subject to the provisions of section *thirteen* hereof. 5

(d.) Whenever it is the duty of an executor, administrator, or trustee, whether acting under a testamentary instrument or not, to purchase an inalienable life annuity for any beneficiary, the sum or amount available for such purchase may, with the consent of such beneficiary if legally competent to consent, or if not legally competent to consent, with the consent of his or her guardian, or in case there shall be no guardian, or in his absence from New Zealand, with the consent of any person appointed in that behalf by the Supreme Court, but in the latter case upon terms to be sanctioned by the Supreme Court, be invested in the purchase of an annuity to commence at a future or deferred date. 10 15 20

(e.) The Supreme Court shall have jurisdiction to determine whether and to what extent the foregoing provisions are in any particular case likely to prove beneficial or otherwise to the legatee or appointee, and if and to the extent to which it shall determine that any such provision is not likely to prove beneficial to the legatee or appointee it may declare, as to the whole or any part of such sum or amount, that such provision shall not apply thereto; and, in the case where the legatee or appointee is entitled to receive payment of the legacy or appointed sum or amount, to order that the same be in whole or in part paid to such legatee or appointee. 25 30

(f.) The costs of any proceeding under this section shall, if the Supreme Court shall so order, be paid out of such sum or amount or out of the annuity. 35

Jurisdiction.

22. The jurisdiction of the Supreme Court or of any Judge thereof given by this Act, or in relation to any question arising under this Act, may be exercised by originating summons.

Jurisdiction
exercised by
originating
summons.