

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.
House of Representatives,
23rd June, 1891.

[AS REPORTED FROM THE JOINT STATUTES REVISION COMMITTEE,
2ND JULY, 1891.]

PROMOTERS' AND DIRECTORS' LIABILITY.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title.</p> <p>2. To what companies Act applies.</p> <p>3. Liability for statements in prospectus.</p> <p>4. Indemnity where name of person has been improperly inserted as a director.</p> | <p>5. Contribution from co-directors, &c.</p> <p>6. Person inserting name of another in prospectus as director, &c., without authority, guilty of a misdemeanour.</p> <p>7. Person wilfully making or issuing false certificate, report, &c., guilty of a misdemeanour.</p> |
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A BILL INTITULED

AN ACT to amend the Law relating to the Liability of Directors and Others for Statements in Prospectuses and other Documents soliciting Applications for Shares or Debentures. 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. The Short Title of this Act is “The Promoters’ and Directors Liability Act, 1891.” Short Title.

10 2. This Act shall apply to or in respect of a company formed or registered, or intended to be formed or registered, under the provisions of “The Companies Act, 1882,” or to a company formed or registered, or intended to be formed or registered, under the provisions of “The Mining Companies Act, 1886,” or formed or intended to be formed under any other Act of the General Assembly now or here-
15 after in force; and the provisions of this Act shall be construed in accordance with the Act under which the company is created, formed, or registered, or intended to be created, formed, registered, or constituted, as the case may require. To what companies Act applies.

20 3. (1.) Where, after the passing of this Act, a prospectus or notice invites persons to subscribe for shares in or debentures or debenture-stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who, having authorised such naming of him, is named in the prospectus or notice as a director of the company, or as having
25 agreed to become a director of the company either immediately or Liability for statements in prospectus.

after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture-stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved,—

- (a.) With respect to every such untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture-stock, as the case may be, believe, that the statement was true ; and
- (b.) With respect to every such untrue statement purporting to be a statement by, or contained in what purports to be a copy of or extract from any assay certificate, or other document whatsoever, setting forth the capacity, productiveness, quality, or capability of any matter or thing respecting the objects or purposes for which the company is formed or intended to be formed, or any of them, or from any report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the assay certificate or other document as aforesaid, or *from* such report or valuation : Provided always that, notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the assay certificate, document, report, or valuation, such director, person named, promoter, or other person who authorised the issue of the prospectus or notice as aforesaid shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, assay certificate, document, report, or valuation was competent to make it ; and
- (c.) With respect to every such untrue statement purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document ;

or unless it is proved that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice, and before allotment thereunder,

he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(2.) A "promoter" in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(3.) Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same.

(4.) In this section the word "expert" includes any person whose profession or occupation, or assumed profession or occupation, gives authority to a statement made by him.

Every action or other legal proceeding under this section shall be commenced within (three) years after the cause of action shall have arisen, and not afterwards.

4. Where any such prospectus or notice as aforesaid contains the name of a person as a promoter or director of the company, or as having agreed to become a promoter or director thereof, and such person has not consented to become a promoter or director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the promoters or directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice, shall be liable to indemnify the person named as a promoter or director of the company, or as having agreed to become a promoter or director thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Indemnity where name of person has been improperly inserted as a director.

5. Every person who, by reason of his being a promoter or director, or named as a promoter or director, or as having agreed to become a promoter or director, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Contribution from co-directors, &c.

Every action or other legal proceeding shall be commenced within (three) years after the liability to contribute shall have arisen, and not afterwards.

6. If any person shall knowingly and wilfully insert, or cause to be inserted, in any prospectus or notice inviting persons to subscribe for shares or debentures or debenture-stock of a company, the name of any other person, whether as director, broker, or solicitor, without the express authority in writing of the person whose name appears on such prospectus, the person so offending shall be deemed

Person inserting name of another in prospectus as director, &c., without authority guilty of a misdemeanour.

guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any term not exceeding *three* years with or without hard labour, or, at the discretion of the Court before which such conviction shall be had, may be adjudged to pay a fine not exceeding *one hundred* pounds, ~~and to be imprisoned for any period not exceeding twelve months.~~ 5

The foregoing provisions shall not prejudice or affect any other liability imposed by or under this Act.

Person wilfully making or issuing false certificate, report, &c., guilty of a misdemeanour.

7. If any person being an engineer, valuer, accountant, or other "expert," within the meaning of the *third* section of this Act, 10 knowingly and wilfully makes, signs, or gives, or causes to be made, signed, or given, any false assay, certificate, report, valuation, or other document whatsoever relating to or setting forth the capacity, productiveness, quality, or capability of any matter or thing respecting the objects or purposes for which any company is formed or is intended 15 to be formed, or, knowing the same to be false, shall issue, utter, offer or dispose of any such *assay*, certificate, report, valuation, or other document whatsoever as aforesaid, he shall be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned with or without hard labour for any term not exceeding *three* years. 20

New clause.

Limitation of action.

Every prosecution or other criminal proceedings for any offence under sections *six* or *seven* of this Act shall be commenced or taken within three years after the alleged offence shall have been committed, and not afterwards.