

**ACT 31**

**A Bill for an Act to Provide for Disclaimer of Real and Personal Property by an Heir, Next of Kin, Devisee, Legatee or Beneficiary Under a Will.**

*Be it Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** This Act is hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of facts constituting such urgency:

While the existence of the right to disclaim real and personal property under a will exists at common law, uncertainty exists as to the time, form and manner in which such disclaimer may be made, and its effect. The purpose of this Act is to provide a time limit, form, manner and effect for such disclaimer to remove such uncertainty and ensure conformity with section 2055 of the Internal Revenue Code of 1954.

SECTION 2. There is hereby added to the Revised Laws of Hawaii 1955, as amended, a new chapter 322A to read as follows:

#### **“CHAPTER 322A. DISCLAIMERS**

**Sec. 322A-1. Right to disclaim succession.** An heir, next of kin, devisee, legatee, beneficiary under a testamentary instrument, person designated to take pursuant to a power of appointment exercised by a testamentary instrument, or person succeeding to an interest disclaimed pursuant to this chapter, may disclaim in whole or in part the succession to any property, real or personal, or interest therein, by filing a written instrument within the time and at the place hereinafter provided. The instrument shall (i) describe the property or part thereof or interest therein disclaimed, (ii) be signed and acknowledged by the disclaimant in the manner provided for the execution of deeds of real estate, and (iii) declare the disclaimer and the extent thereof.

**Sec. 322A-2. Time and place of filing.** If the taker of the property or interest has been finally ascertained and his interest has become indefeasibly fixed both in quality and in quantity, the instrument specified in section 322A-1 shall be filed within 15 months after the death of the decedent or the donee of the power, as the case may be, except that if such decedent or donee shall have died within two years prior to July 1, 1966, such instrument shall be filed within 15 months after July 1, 1966. If the taker of the property or interest has not been finally ascertained or his interest has not become indefeasibly fixed both in quality and in quantity within the period specified in the preceding sentence, the instrument specified in section 322A-1 shall be filed at any time before or not later than 15 months after the event when the taker has become finally ascertained and his interest has become indefeasibly fixed both in quality and in quantity.

The place of filing the instrument shall be the court of this State in which the estate within the State of Hawaii of the decedent or the donee of the power is administered or if there is no administration within 15 months after the death of the decedent or donee, then in the court of this State provided by law as the proper place of administration of the estate within the State of Hawaii of the decedent or donee. If an interest in real estate is disclaimed, a copy of the instrument also shall be recorded in the bureau of conveyances, unless the title to the real estate is registered in the land court, in which event a copy of the instrument shall be presented for registration in the same manner as a deed or other voluntary instrument and a memo-

randum thereof shall be made on the certificate of title and on the owner's duplicate certificate.

**Sec. 322A-3. Effect of disclaimer.** (a) Unless the decedent or donee of the power has otherwise provided by will, the property or interest therein or part thereof disclaimed as provided in sections 322A-1 and 322A-2 shall descend or be distributed as if the disclaimant had predeceased the decedent, or if the disclaimant be one designated to take pursuant to a power of appointment exercised by a testamentary instrument, then as if the disclaimant had predeceased the donee of the power. In every case the disclaimer shall relate back for all purposes to the date of death of the decedent or the donee, as the case may be.

(b) Any conveyance of or contract to convey real property or any interest therein, or assignment or transfer of or contract to assign or transfer personal property, or written waiver of the right to disclaim, by a person entitled to disclaim pursuant to this chapter, or any sale or other disposition of his interest pursuant to judicial process, made before the expiration of the period in which he may disclaim as herein provided, bars the right to disclaim as to the property or interest.

(c) The right to disclaim granted by this chapter shall exist irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(d) This chapter shall not abridge any right of any person now existing or hereafter arising to assign, convey, release, or renounce any property or interest therein.

(e) Any interest in real or personal property which exists on the effective date of this chapter may be disclaimed after the effective date of this chapter in the manner provided herein, but no interest which has arisen prior to the effective date of this chapter in any person other than the disclaimant shall be destroyed or diminished by any action of the disclaimant taken pursuant to this chapter."

**SECTION 3.** This Act shall take effect on July 1, 1966.  
(Approved April 8, 1966.) **H.B. 370.**