



Substitute House Bill No. 6694

Public Act No. 13-301

AN ACT CONCERNING THE INHERITANCE RIGHTS OF A CHILD WHO IS BORN AFTER THE DEATH OF A MARRIED PARENT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2013*) (a) For purposes of determining rights to property to be distributed upon the death of a decedent, a child of the decedent conceived and born after the death of the decedent shall be deemed to have been born in the lifetime of the decedent and after the execution of all of the decedent's testamentary instruments, if:

(1) The decedent executed a written document that: (A) Specifically set forth that his sperm or her eggs may be used for the posthumous conception of a child, (B) specifically provided his or her spouse with authority to exercise custody, control and use of the sperm or eggs in the event of his or her death, and (C) was signed and dated by the decedent and the surviving spouse; and

(2) The child posthumously conceived using the decedent's sperm or eggs was in utero not later than one year after the date of death of the decedent spouse.

(b) The surviving spouse of a decedent who has executed a document described in subsection (a) of this section shall provide a

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copy of such document to (1) the fiduciary of the decedent's estate, if a Probate Court has admitted the decedent's will to probate or granted administration of the decedent's estate, or (2) to the person filing an affidavit or statement in lieu of administration, if the estate is being settled under section 45a-273 of the general statutes, not later than thirty days after the date of the decedent's death, appointment of a first fiduciary, or filing of an affidavit or statement in lieu of administration, whichever is latest. Not later than thirty days after the date of receipt of such document, the fiduciary of the decedent's estate or person filing an affidavit or statement in lieu of administration shall provide written notification of the existence of such document to the court. In the absence of being in possession of a document described in subsection (a) of this section, if the fiduciary of the decedent's estate or person filing an affidavit or statement in lieu of administration has actual knowledge that the decedent, during his or her lifetime, preserved sperm or eggs, or executed a document described in subsection (a) of this section, such fiduciary or person shall provide written notification to the court. The failure of a surviving spouse, fiduciary or person filing an affidavit or statement in lieu of administration to comply with the notice requirements prescribed in this subsection shall not impair a child's right to property under subsection (a) of this section.

(c) Except as provided in section 4 of this act, the Probate Court having jurisdiction of the estate of the decedent, or if no probate proceedings have been commenced, the Probate Court for the district in which the decedent was domiciled at the time of death, shall have jurisdiction over any dispute relating to the rights to property of a child conceived and born after the death of a decedent, whether or not the property is part of the probate estate. A child or person acting on behalf of a child who claims rights to the property of a decedent under subsection (a) of this section shall prove such claim by clear and convincing evidence.

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Sec. 2. Section 45a-262 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) The words "child", "children", "issue", "descendants", "descendant", "heirs", "heir", "unlawful heirs", "grandchild" and "grandchildren", when used in the singular or plural in any will or trust instrument, shall, unless such document clearly indicates a contrary intention, be deemed to include children born as a result of A.I.D. The provisions of this [section] subsection shall apply to wills and trust instruments whether or not executed before, on or after October 1, 1975, unless the instrument indicates an intent to the contrary.

(b) The words "child", "children", "issue", "descendants", "descendant", "heirs", "heir", "unlawful heirs", "grandchild" and "grandchildren", when used in the singular or plural in any will or trust instrument, shall, unless such document clearly indicates a contrary intention, be deemed to include children born after the death of the decedent, as provided in subsection (a) of section 1 of this act. The provisions of this subsection shall apply to wills and trust instruments whether or not executed before, on or after October 1, 2013, unless the instrument indicates an intent to the contrary.

Sec. 3. (NEW) (*Effective October 1, 2013*) No fiduciary shall be personally chargeable for any assets that a fiduciary may have distributed to any beneficiary or heir when it is determined after the fiduciary made distributions that a child born after the death of the decedent, as provided in subsection (a) of section 1 of this act, is entitled to property from the estate, unless: (1) In accordance with the requirements of subsection (b) of section 1 of this act, the surviving spouse of the decedent provided the fiduciary with a copy of a document executed by the decedent in accordance with the requirements of subsection (a) of section 1 of this act, (2) the fiduciary had actual knowledge at the time of the distributions that the

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decedent, during his or her lifetime, preserved sperm or eggs or executed a document described in subsection (a) of section 1 of this act, or (3) not later than one hundred fifty days after the date of the appointment of the first fiduciary, a person acting on behalf of the child provided written notice to the fiduciary that a child meeting the requirements of subsection (a) of section 1 of this act has been or may be conceived.

Sec. 4. (NEW) (*Effective October 1, 2013*) (a) Following final distribution of all assets known to a fiduciary, if an action is brought in the Superior Court by a child or on behalf of a child claiming rights to property under subsection (a) of section 1 of this act, a beneficiary shall be liable, in such action brought by or on behalf of such child, to the extent of the fair market value on the date of distribution of any assets received by such beneficiary from the estate of a decedent, for the property to which the child is entitled and which has not previously been recovered out of assets held by the fiduciary or from any other source described in subsection (b) of this section. For purposes of this section, the date of distribution of real estate specifically devised and real estate passing under the laws of descent and distribution shall be the date of the decedent's death.

(b) No liability may be imposed upon any such beneficiary under subsection (a) of this section, unless the plaintiff establishes to the court that the obligation to the plaintiff cannot be fully satisfied: (1) Because there are insufficient assets available for such purpose in the hands of the fiduciary; and (2) by action against persons prior in liability to the beneficiary under subsections (a), (b) and (c) of section 45a-369 of the general statutes, because such persons are insolvent or for any other reason, other than not being amenable to suit in this state, cannot be made to answer for their liabilities.

Sec. 5. (NEW) (*Effective October 1, 2013*) The maximum liability to which a beneficiary is subject under subsection (a) of section 4 of this

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act is the beneficiary's ratable obligation, in the proportion that the value of the assets passing to the beneficiary bears to the value of all such assets passing to beneficiaries within the same order of liability as the beneficiary under subsection (a) of section 45a-369 of the general statutes, and no judgment may be had or entered in favor of any plaintiff against any such beneficiary for more than such ratable obligation.

Sec. 6. Subsection (a) of section 45a-257b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) Except as provided in subsection (b) of this section, if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, including any child who is born as a result of artificial insemination to which the testator has consented in accordance with subsection (b) of section 45a-772 and any child born after the death of the testator as provided in subsection (a) of section 1 of this act, the omitted after-born or after-adopted child receives a share in the estate as follows:

(1) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised or bequeathed all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(2) If the testator had one or more children living when the testator executed the will, and the will devised or bequeathed property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

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(A) Except as provided in subparagraph (E) of this subdivision, the portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises and legacies made to the testator's then-living children under the will.

(B) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (A) of this subdivision, that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises and legacies were made under the will and had given an equal share of the estate to each child.

(C) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised or bequeathed to the testator's then-living children under the will.

(D) In satisfying a share provided by this subdivision, devises and legacies to the testator's children who were living when the will was executed abate ratably. In the abatement of the devises and legacies of the then-living children, to the maximum extent possible the character of the testamentary plan adopted by the testator shall be preserved.

(E) If it appears from the will that the intention of the testator was to make a limited provision which specifically applied only to the testator's living children at the time the will was executed, the after-born or after-adopted child succeeds to the portion of such testator's estate as would have passed to such child had the testator died intestate.

Sec. 7. Subsection (a) of section 45a-438 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) After distribution has been made of the intestate estate to the

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surviving spouse in accordance with section 45a-437, all the residue of the real and personal estate shall be distributed in equal proportions, according to its value at the time of distribution, among the children, including children born after the death of the decedent, as provided in subsection (a) of section 1 of this act, and the legal representatives of any of them who may be dead, except that children or other descendants who receive estate by advancement of the intestate in the intestate's lifetime shall themselves or their representatives have only so much of the estate as will, together with such advancement, make their share equal to what they would have been entitled to receive had no such advancement been made.

Sec. 8. Section 45a-368 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) Subject to the provisions of sections 45a-369 to 45a-375, inclusive, a beneficiary is liable, in an action or actions brought in the Superior Court, to the extent of the fair market value on the date of distribution of any assets received by [him as a] such beneficiary from the estate of a decedent, for the expenses of administering the estate, claims, funeral expenses of the decedent [,] and all taxes for which the estate is liable, which have not previously been recovered out of assets held by the fiduciary or from any other source described in subsection (b) of this section. [or in section 45a-409.] For purposes of this section, the date of distribution of real estate specifically devised and real estate passing under the laws of descent and distribution shall be the date of the decedent's death.

(b) No liability may be imposed upon any such beneficiary under subsection (a) of this section, unless the plaintiff establishes [satisfactorily] to the court that the obligation to [him] the plaintiff cannot be fully satisfied: (1) Because there are insufficient assets available for such purpose in the hands of the fiduciary; (2) by action against persons prior in liability to the [defendant] beneficiary under

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subsections (a), (b) and (c) of section 45a-369, because such persons are insolvent or for any other reason, other than not being amenable to suit in this state, cannot be made to answer for their liabilities; and (3) by the enforcement, under section 45a-266, of any lien, security interest or other charge he holds against assets of the decedent specifically disposed of by will or passing to a distributee, or against the proceeds of any policy of insurance on the life of the decedent payable to a named beneficiary.

Approved July 12, 2013