



# House of Representatives

**File No. 889**

General Assembly

January Session, 2013

**(Reprint of File No. 740)**

Substitute House Bill No. 6694  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 31, 2013

***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:

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

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

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

15 the decedent spouse.

16 (b) The surviving spouse of a decedent who has executed a  
17 document described in subsection (a) of this section shall provide a  
18 copy of such document to (1) the fiduciary of the decedent's estate, if a  
19 Probate Court has admitted the decedent's will to probate or granted  
20 administration of the decedent's estate, or (2) to the person filing an  
21 affidavit or statement in lieu of administration, if the estate is being  
22 settled under section 45a-273 of the general statutes, not later than  
23 thirty days after the date of the decedent's death, appointment of a first  
24 fiduciary, or filing of an affidavit or statement in lieu of administration,  
25 whichever is latest. Not later than thirty days after the date of receipt  
26 of such document, the fiduciary of the decedent's estate or person  
27 filing an affidavit or statement in lieu of administration shall provide  
28 written notification of the existence of such document to the court. In  
29 the absence of being in possession of a document described in  
30 subsection (a) of this section, if the fiduciary of the decedent's estate or  
31 person filing an affidavit or statement in lieu of administration has  
32 actual knowledge that the decedent, during his or her lifetime,  
33 preserved sperm or eggs, or executed a document described in  
34 subsection (a) of this section, such fiduciary or person shall provide  
35 written notification to the court. The failure of a surviving spouse,  
36 fiduciary or person filing an affidavit or statement in lieu of  
37 administration to comply with the notice requirements prescribed in  
38 this subsection shall not impair a child's right to property under  
39 subsection (a) of this section.

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

49 convincing evidence.

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

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

61 (b) The words "child", "children", "issue", "descendants",  
62 "descendant", "heirs", "heir", "unlawful heirs", "grandchild" and  
63 "grandchildren", when used in the singular or plural in any will or  
64 trust instrument, shall, unless such document clearly indicates a  
65 contrary intention, be deemed to include children born after the death  
66 of the decedent, as provided in subsection (a) of section 1 of this act.  
67 The provisions of this subsection shall apply to wills and trust  
68 instruments whether or not executed before, on or after October 1,  
69 2013, unless the instrument indicates an intent to the contrary.

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

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

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

101 (b) No liability may be imposed upon any such beneficiary under  
102 subsection (a) of this section, unless the plaintiff establishes to the  
103 court that the obligation to the plaintiff cannot be fully satisfied: (1)  
104 Because there are insufficient assets available for such purpose in the  
105 hands of the fiduciary; and (2) by action against persons prior in  
106 liability to the beneficiary under subsections (a), (b) and (c) of section  
107 45a-369 of the general statutes, because such persons are insolvent or  
108 for any other reason, other than not being amenable to suit in this state,  
109 cannot be made to answer for their liabilities.

110 Sec. 5. (NEW) (*Effective October 1, 2013*) The maximum liability to  
111 which a beneficiary is subject under subsection (a) of section 4 of this  
112 act is the beneficiary's ratable obligation, in the proportion that the  
113 value of the assets passing to the beneficiary bears to the value of all

114 such assets passing to beneficiaries within the same order of liability as  
115 the beneficiary under subsection (a) of section 45a-369 of the general  
116 statutes, and no judgment may be had or entered in favor of any  
117 plaintiff against any such beneficiary for more than such ratable  
118 obligation.

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

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

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

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

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

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

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

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

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

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

170 (a) After distribution has been made of the intestate estate to the  
171 surviving spouse in accordance with section 45a-437, all the residue of  
172 the real and personal estate shall be distributed in equal proportions,  
173 according to its value at the time of distribution, among the children,  
174 including children born after the death of the decedent, as provided in  
175 subsection (a) of section 1 of this act, and the legal representatives of  
176 any of them who may be dead, except that children or other  
177 descendants who receive estate by advancement of the intestate in the

178 intestate's lifetime shall themselves or their representatives have only  
179 so much of the estate as will, together with such advancement, make  
180 their share equal to what they would have been entitled to receive had  
181 no such advancement been made.

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

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

196 (b) No liability may be imposed upon any such beneficiary under  
197 subsection (a) of this section, unless the plaintiff establishes  
198 [satisfactorily] to the court that the obligation to [him] the plaintiff  
199 cannot be fully satisfied: (1) Because there are insufficient assets  
200 available for such purpose in the hands of the fiduciary; (2) by action  
201 against persons prior in liability to the [defendant] beneficiary under  
202 subsections (a), (b) and (c) of section 45a-369, because such persons are  
203 insolvent or for any other reason, other than not being amenable to suit  
204 in this state, cannot be made to answer for their liabilities; and (3) by  
205 the enforcement, under section 45a-266, of any lien, security interest or  
206 other charge he holds against assets of the decedent specifically  
207 disposed of by will or passing to a distributee, or against the proceeds  
208 of any policy of insurance on the life of the decedent payable to a  
209 named beneficiary.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	45a-262
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	45a-257b(a)
Sec. 7	<i>October 1, 2013</i>	45a-438(a)
Sec. 8	<i>October 1, 2013</i>	45a-368

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

There is no fiscal impact to the state or municipalities from defining the statutory rights of inheritance of certain children born after the death of a married parent.

House "A" struck the language of the underlying bill and replaces it with language that does not result in a fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

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**OLR Bill Analysis****sHB 6694 (as amended by House "A")\******AN ACT CONCERNING THE INHERITANCE RIGHTS OF A CHILD WHO IS BORN AFTER THE DEATH OF A MARRIED PARENT.*****SUMMARY:**

This bill provides certain inheritance rights to a child conceived and born after the death of one of his or her married parents (i.e., a posthumously conceived child). It includes posthumously conceived children in the meaning of certain terms such as "child," "descendant," and "heir" used in wills or trust instruments, thus allowing posthumously conceived children to receive the same rights the wills or trusts provide to other children or descendants. If the deceased parent had a valid will that did not provide for posthumously conceived children, the bill gives a posthumously conceived child the same rights the law provides to a child born after a parent's will was executed. If the deceased parent did not have a will (i.e. intestate), the bill includes a posthumously conceived child among the children to whom the residue of an intestate estate must be distributed by law.

To qualify for these rights, the bill requires a written document, signed and dated by both parents, specifically authorizing the surviving spouse to use the decedent spouse's sperm or egg to posthumously conceive a child, who must be in utero within one year of the parent's death. It establishes notification requirements regarding the authorization document for the surviving spouse and the fiduciary or person filing an affidavit in lieu of administration.

The bill:

1. establishes the circumstances under which a fiduciary may be personally charged for not distributing assets to a posthumously

conceived child;

2. allows the representative of a posthumously conceived child to bring an action for an unsatisfied obligation against the other estate beneficiaries and requires that such claim be proven by clear and convincing evidence;
3. establishes a beneficiary's maximum liability in such a case; and
4. specifies the probate court that has jurisdiction over any dispute relating to a posthumously conceived child's inheritance rights, except for certain Superior Court actions.

Lastly, the bill makes technical changes.

\*House Amendment "A":

1. establishes a notice requirement for fiduciaries and persons filing an affidavit in lieu of administration,
2. specifies the probate court's jurisdiction over most disputes related to a posthumously conceived child's property rights,
3. removes the requirement that a fiduciary include the authorization document in the required inventory of the decedent's property,
4. establishes the circumstances under which a fiduciary may be personally charged,
5. establishes a beneficiary's maximum liability in an action brought on behalf of a posthumously conceived child for an unsatisfied obligation,
6. specifies that certain terms used in wills or trust instruments include posthumously conceived children, and
7. makes technical changes.

EFFECTIVE DATE: October 1, 2013

### **ELIGIBILITY REQUIREMENTS**

For property distribution purposes, the bill deems a posthumously conceived child to have been born in the decedent's lifetime and after the execution of his or her will if the child or his or her representative proves by clear and convincing evidence that:

1. the decedent spouse executed a written document that: (a) specifically authorizes the use of his or her sperm or egg to posthumously conceive a child; (b) specifically authorizes his or her spouse to exercise custody, control, and use of the sperm or egg in the event of his or her death; and (c) was signed and dated by the decedent spouse and the surviving spouse and
2. the posthumously conceived child was in utero within one year of the decedent spouse's death.

### **NOTIFICATION REQUIREMENTS**

The bill establishes notification requirements for the surviving spouse, fiduciary, and the person filing an affidavit in lieu of administration. Under the bill, any failure to comply with the notice requirements does not affect a child's inheritance rights.

#### ***Surviving Spouse***

The bill requires the surviving spouse to provide a copy of the authorization document to (1) the fiduciary of the decedent spouse's estate, if the probate court admitted the will to probate or granted administration to the estate, or (2) the person filing an affidavit or statement in lieu of administration, if the estate is being settled without probate.

The surviving spouse must provide this document within 30 days of the (1) decedent's death, (2) appointment of the first fiduciary, or (3) filing of an affidavit or statement in lieu of administration, whichever is latest.

***Fiduciary or Person Filing an Affidavit in Lieu of Administration***

Under the bill, the fiduciary or person filing the affidavit in lieu of administration must notify the court in writing of the authorization document's existence within 30 days of receiving it. If the fiduciary or person filing the affidavit does not have the document but actually knows that it was executed, he or she must also provide the court written notification.

**INHERITANCE RIGHTS**

The bill expands the definition of "child," "children," "issue," "descendants," "descendant," "heirs," "heir," "unlawful heirs," "grandchild," and "grandchildren," when used in wills or trust instruments, to include posthumously conceived children. This applies to wills and trust instruments executed before, on, or after October 1, 2013 unless a contrary intention is indicated in such documents.

***Failure to Provide for Children Born or Adopted After the Execution of a Will***

If a parent fails to provide for a child born or adopted after the parent's will was executed, the law entitles the omitted child to a share in the parent's estate under certain circumstances. The bill extends these inheritance rights in the same manner to posthumously conceived children who were not provided for in the deceased parent's will.

Thus, if there were no living children when the will was executed, the posthumously conceived child receives a share in the estate equal to what the child would have received had the parent died intestate, unless the will devised or bequeathed all or substantially all of the estate to the surviving spouse who is entitled to take under the will.

If there were one or more children living when the will was executed, and the will devised or bequeathed property or an interest in property to one or more of the then-living children, the posthumously conceived child receives the share of the estate that he or she would

have received had the deceased parent (1) included all omitted after-born and after-adopted children with the children who were provided for under the will and (2) given an equal share of the estate to each child, subject to certain restrictions (see BACKGROUND).

### ***Intestate Estate***

By law, when a person dies without a valid will (i.e. intestate), after the distribution of the estate has been made to the surviving spouse, the residue of the real and personal estate must be distributed equally among the children, with certain exceptions. The bill includes posthumously conceived children among the children to whom the residue of an intestate estate must be distributed.

## **ACTION AGAINST A FIDUCIARY OR BENEFICIARIES**

### ***Probate Court Jurisdiction***

Except for certain actions against estate beneficiaries in Superior Court (see below), the bill gives jurisdiction over any disputes related to a posthumously conceived child's property rights to the probate court (1) with jurisdiction over the deceased's estate or (2) for the district where the decedent lived when he or she died, if no probate proceedings have started.

### ***Charging a Fiduciary***

Under the bill, a fiduciary cannot be personally charged for any estate assets he or she distributed to a beneficiary or heir before a posthumously conceived child's entitlement to the estate's property was determined, unless the:

1. surviving spouse of the decedent provided the fiduciary with a copy of the authorization document executed by the decedent;
2. fiduciary had actual knowledge at the time of the distributions that the decedent, during his or her lifetime, preserved sperm or eggs or executed the document described above; or
3. child's representative, within 150 days after the first fiduciary's

appointment, notified the fiduciary in writing that a child has been or may be posthumously conceived.

### ***Actions Against Beneficiaries***

By law, an estate's beneficiary is liable for unpaid expenses for administering the estate, funeral expenses of the decedent, all taxes for which the estate is liable, and claims that were not satisfied from the estate's assets. If a posthumously conceived child, or his or her representative, brings a Superior Court action claiming property rights to his or her deceased parent's estate after the estate's fiduciary has distributed all of the estate's known assets, the bill limits a beneficiary's liability to the extent of the fair market value, on the date of distribution, of the assets the beneficiary received and to which the child is entitled. The bill specifies that the date of the decedent's death must be considered the date of distribution of real estate specifically devised and real estate passing under the laws of descent and distribution.

The maximum liability to which a beneficiary may be subject is the beneficiary's ratable obligation in the same proportion of the assets received by the beneficiary relative to the value of all such assets distributed to all beneficiaries in the same order of liability under law (see BACKGROUND).

Under the bill, no liability may be imposed on such a beneficiary unless the plaintiff shows that (1) the fiduciary has insufficient assets to meet the obligation, (2) persons prior to the beneficiary in order of liability are insolvent or cannot otherwise be sued, and (3) enforcement of encumbrances on property or life insurance proceeds of the decedent will not satisfy the obligation.

## **BACKGROUND**

### ***Fiduciary***

A fiduciary is an individual, corporation, or association holding assets for another party, often with the legal authority and duty to make decisions regarding financial matters on behalf of the other

party. A fiduciary may be an executor, administrator, trustee, conservator, and guardian.

### ***Children Born or Adopted After Execution of a Parent's Will***

By law, an omitted child born or adopted after the execution of a parent's will, including any child born as a result of consented artificial insemination, is entitled to a share in the deceased parent's estate unless the omission was intentional or the omitted child was otherwise provided for. If the will devised or bequeathed property to one or more then-living children, the omitted child's share of the estate:

1. is limited to a share of the portion of the estate made to the then-living children under the will and
2. must be of the same character, whether equitable or legal, present or future, as that devised or bequeathed to the then-living children under the will.

If there are not enough assets to satisfy the provisions of the will, in the abatement of the devises and legacies of the then-living children, the character of the will must be preserved.

If it appears from the will that the intention was to make a limited provision which specifically applied only to the 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.

### ***Order of Liability***

Except for assets securing the decedent's debts and tax liability, beneficiaries are liable in the following order:

1. distributees,
2. residuary beneficiaries,
3. beneficiaries of general dispositions,

4. beneficiaries of specific dispositions of personal property,
5. beneficiaries of specific dispositions of real property, and
6. transfer on death beneficiaries.

### **Related Case**

In *Astrue v. Capato*, 132 S.Ct. 2021 (2012), the U.S. Supreme Court found that twins conceived after their father's death were ineligible for Social Security survivor benefits. The Court agreed with the Social Security Administration that, in order to be eligible for benefits, a person must either qualify as a child of the deceased insured parent under state intestacy laws (the laws governing succession to estates of those who die without a valid will) or satisfy one of the following statutory alternatives:

1. if the applicant is a son or daughter of an insured deceased individual, but does not qualify as a child under state intestacy law, he or she must demonstrate that both parents went through a marriage ceremony that would have been valid except for certain legal impediments (42 USC § 416(h)(2)(B));
2. the insured deceased parent must have (a) acknowledged in writing that the person is his or her son or daughter, (b) been decreed by a court to be the person's father or mother, or (c) been ordered to pay child support (42 USC § 416(h)(3)(C)(i)); or
3. the person must prove that the insured deceased individual was his or her parent and was living with or contributing to his or her support when the insured individual died (42 USC § 416(h)(3)(C)(ii).

In this case, the twins could not inherit under the relevant state's intestacy law (i.e., Florida) and could not qualify under the statutory alternatives.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 39    Nay 5    (04/19/2013)