



General Assembly

January Session, 2013

Raised Bill No. 6694

LCO No. 5442



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

***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 spouse, a child of the decedent spouse, born after the death
4 of the decedent spouse, shall be deemed to have been born in the
5 lifetime of the decedent spouse, and after the execution of all of the
6 decedent spouse's testamentary instruments, if the child or his or her
7 representative proves by clear and convincing evidence that:

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

15 (2) The child posthumously conceived using the decedent spouse's
16 genetic material was in utero not later than one year after the date of
17 death of the decedent spouse.

18 (b) Upon the death of a decedent spouse who has executed a
19 document described in subsection (a) of this section, the surviving
20 spouse shall ensure that a copy of such document is provided to the
21 fiduciary of the decedent spouse's estate not later than thirty days after
22 the date of the decedent spouse's death.

23 Sec. 2. Subdivision (1) of subsection (a) of section 45a-341 of the
24 general statutes is repealed and the following is substituted in lieu
25 thereof (*Effective October 1, 2013*):

26 (a) (1) An inventory of all the property of every deceased person
27 and insolvent debtor, except real property situated outside the state,
28 duly appraised, shall be made and signed under penalty of false
29 statement by the fiduciary. The inventory shall include any written
30 document supplied to the fiduciary by a surviving spouse in
31 compliance with the requirements set forth in section 1 of this act.

32 Sec. 3. (NEW) (*Effective October 1, 2013*) If a claim is made on behalf
33 of a child, which alleges that such child is a beneficiary of the decedent
34 entitled to property under section 1 of this act, any payment or
35 distribution of assets by a fiduciary shall be deemed to have been
36 made in good faith unless the claimant proves that the fiduciary had
37 knowledge of the child's existence at the time of payment or
38 distribution of the assets.

39 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) Except as otherwise
40 provided in subsection (b) of section 45a-357 of the general statutes
41 and section 45a-375 of the general statutes, the failure of a person,
42 acting on behalf of a child who alleges to be a beneficiary of the
43 decedent entitled to property under section 1 of this act, to present his
44 or her claim to the fiduciary as prescribed by law, shall not impair such
45 person's right to maintain an action against the beneficiaries under

46 section 45a-368 of the general statutes; provided nothing contained in
47 this section shall extend the time limit for the commencement of an
48 action to enforce such person's claim.

49 (b) Following final distribution of all assets known to a fiduciary,
50 any suit on an unsatisfied obligation described in subsection (a) of
51 section 45a-368 of the general statutes shall be brought against
52 beneficiaries and not against the fiduciary, unless the plaintiff is
53 seeking to have the fiduciary personally surcharged.

54 Sec. 5. Subsection (a) of section 45a-257b of the general statutes is
55 repealed and the following is substituted in lieu thereof (*Effective*
56 *October 1, 2013*):

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

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

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

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

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

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

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

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

102 Sec. 6. Subsection (a) of section 45a-438 of the general statutes is
103 repealed and the following is substituted in lieu thereof (*Effective*
104 *October 1, 2013*):

105 (a) After distribution has been made of the intestate estate to the
106 surviving spouse in accordance with section 45a-437, all the residue of

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	New section
Sec. 2	October 1, 2013	45a-341(a)(1)
Sec. 3	October 1, 2013	New section
Sec. 4	October 1, 2013	New section
Sec. 5	October 1, 2013	45a-257b(a)
Sec. 6	October 1, 2013	45a-438(a)

Statement of Purpose:

To define the statutory rights of inheritance of certain children who are born after the death of a married parent.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]