

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 13-301—sHB 6694

Judiciary Committee

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

SUMMARY: This act allows a posthumously conceived child (i.e., a child conceived and born after the death of one of his or her married parents) to receive the same rights the will or trust of his or her deceased parent provides to other children or descendants. It does this by including a posthumously conceived child in the meaning of certain terms such as “child,” “descendant,” and “heir” used in wills or trust instruments.

The act provides these rights regardless of whether the deceased parent had a will. If the deceased parent had a valid will that did not provide for a posthumously conceived child, the act gives such a 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., died intestate), the act 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 act 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 by the probate court.

The act:

1. establishes the circumstances in 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 act makes technical changes.

EFFECTIVE DATE: October 1, 2013

ELIGIBILITY REQUIREMENTS

For property distribution purposes, the act 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

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

Surviving Spouse

The act 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 act, 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. The fiduciary or person filing the affidavit must also provide the court written notification if he or she does not have the document but actually knows that it was executed or that the decedent preserved sperm or egg in his or her lifetime.

INHERITANCE RIGHTS

The act 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

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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 act 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 act 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 act 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 act, 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.

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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 act 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 act 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 act, 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

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

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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.

OLR Tracking: MK:JR:PF:ts