

HOUSE BILL 101

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2lr1145
CF SB 71

By: **Delegates Pena–Melnyk, Anderson, Costa, and Hubbard**

Introduced and read first time: January 19, 2012

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 17, 2012

CHAPTER _____

1 AN ACT concerning

2 **Health – General – Posthumous Use of Donor Sperm and Eggs**

3 FOR the purpose of prohibiting a person from using sperm or eggs from a known donor
4 ~~after the donor's death~~ for the purpose of assisted reproduction, ~~except~~ under
5 certain circumstances; establishing requirements for a certain consent;
6 establishing certain penalties for a ~~certain~~ violation of certain provisions of this
7 Act; providing for the application of certain provisions of this Act; altering the
8 definition of "child", for purposes of certain provisions of law regarding
9 inheritance, to include a child conceived from the genetic material of a person
10 after the person's death under certain circumstances; providing that a certain
11 after-born relation may not be considered as entitled to distribution in that
12 relation's own right, unless the decedent had consented in a written record to
13 use of the decedent's genetic material for posthumous conception in accordance
14 with the requirements of a certain provision of law, the decedent consented in a
15 written record to be the parent of a child posthumously conceived using the
16 decedent's genetic material, and the child posthumously conceived was born
17 within a certain period after the death of the decedent; making stylistic
18 changes; and generally relating to the posthumous use of donor sperm and eggs.

19 BY repealing and reenacting, with amendments,

20 Article – Estates and Trusts

21 Section 1–205 and 3–107

22 Annotated Code of Maryland

23 (2011 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
2 Article – Health – General
3 Section 20–111
4 Annotated Code of Maryland
5 (2009 Replacement Volume and 2011 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article – Estates and Trusts**

9 1–205.

10 **(A) A child includes:**

11 **(1) [a] A legitimate child, an adopted child, and an illegitimate**
12 **child to the extent provided in §§ 1–206 through 1–208 of this subtitle; AND**

13 **(2) A CHILD CONCEIVED FROM THE GENETIC MATERIAL OF A**
14 **PERSON AFTER THE DEATH OF THE PERSON IF:**

15 **(i) THE PERSON CONSENTED IN A WRITTEN RECORD TO**
16 **USE OF THE PERSON’S GENETIC MATERIAL FOR POSTHUMOUS CONCEPTION IN**
17 **ACCORDANCE WITH THE REQUIREMENTS OF § 20–111 OF THE**
18 **HEALTH – GENERAL ARTICLE; AND**

19 **(ii) THE PERSON CONSENTED IN A WRITTEN RECORD TO BE**
20 **THE PARENT OF A CHILD POSTHUMOUSLY CONCEIVED USING THE PERSON’S**
21 **GENETIC MATERIAL.**

22 **(B) A child does not include a stepchild, a foster child, or a grandchild or**
23 **more remote descendant.**

24 3–107.

25 **(A) A child of the decedent who is conceived before the death of the decedent,**
26 **but born afterwards shall inherit as if [he] THE CHILD had been born in the lifetime**
27 **of the decedent.**

28 **(B) No other after-born relation may be considered as entitled to distribution**
29 **in [his] THE RELATION’S own right UNLESS:**

30 **(1) THE DECEDENT HAD CONSENTED IN A WRITTEN RECORD TO**
31 **USE OF THE DECEDENT’S GENETIC MATERIAL FOR POSTHUMOUS CONCEPTION**

1 IN ACCORDANCE WITH THE REQUIREMENTS OF § 20-111 OF THE
 2 HEALTH – GENERAL ARTICLE;

3 (2) THE PERSON CONSENTED IN A WRITTEN RECORD TO BE THE
 4 PARENT OF A CHILD POSTHUMOUSLY CONCEIVED USING THE PERSON’S
 5 GENETIC MATERIAL; AND

6 (3) THE CHILD POSTHUMOUSLY CONCEIVED USING THE
 7 DECEDENT’S GENETIC MATERIAL IS BORN WITHIN 2 YEARS AFTER THE DEATH
 8 OF THE DECEDENT.

9 Article – Health – General

10 20-111.

11 (A) (1) THIS SECTION APPLIES TO THE USE OF SPERM OR EGGS FROM
 12 A DONOR KNOWN TO THE INDIVIDUAL WHO INTENDS TO BECOME A PARENT
 13 THROUGH THE USE OF THE SPERM OR EGGS.

14 (2) THIS SECTION DOES NOT APPLY TO THE USE OF SPERM OR
 15 EGGS DONATED TO A TISSUE BANK OR FERTILITY CLINIC BY A DONOR WHO
 16 INTENDED TO REMAIN ANONYMOUS EITHER INDEFINITELY OR UNTIL A CHILD
 17 THAT RESULTS FROM THE USE OF THE SPERM OR EGGS BECOMES AN ADULT.

18 ~~(A) (B)~~ A PERSON MAY NOT USE SPERM OR EGGS FROM A KNOWN
 19 DONOR ~~AFTER THE DONOR’S DEATH~~ FOR THE PURPOSE OF ASSISTED
 20 REPRODUCTION, ~~UNLESS THE DONOR PREVIOUSLY GAVE IF:~~

21 (1) THE PERSON KNOWS THAT THE KNOWN DONOR DIED AND DID
 22 NOT GIVE CONSENT FOR THE POSTHUMOUS USE OF THE SPERM OR EGGS; OR

23 (2) THE DONOR OR THE INDIVIDUAL WHO INTENDS TO BECOME A
 24 PARENT THROUGH THE USE OF THE SPERM OR EGGS RECEIVES ANY
 25 REMUNERATION FOR THE DONATION OR USE OF THE SPERM OR EGGS.

26 ~~(B) (C)~~ A DONOR’S CONSENT TO THE POSTHUMOUS USE OF THE
 27 DONOR’S SPERM OR EGGS GIVEN ON OR AFTER OCTOBER 1, 2012 IS NOT VALID
 28 UNLESS IT IS:

29 (1) IN WRITING; AND

30 (2) SIGNED BY THE DONOR OR BY SOME OTHER PERSON FOR THE
 31 DONOR, IN THE PRESENCE OF THE DONOR, AND AT THE EXPRESS DIRECTION OF
 32 THE DONOR; ~~AND~~

1 ~~(3) ACKNOWLEDGED BY THE DONOR BEFORE A NOTARY PUBLIC.~~

2 ~~(c)~~ (D) A PERSON WHO ~~KNOWINGLY~~ VIOLATES THIS SECTION IS
3 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

4 (1) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$1,000; AND

5 (2) FOR A SECOND OR SUBSEQUENT OFFENSE, A FINE NOT
6 EXCEEDING \$5,000.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2012.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.