

Chapter 644

(House Bill 857)

AN ACT concerning

Estates and Trusts – Posthumously Conceived Child

FOR the purpose of requiring copies of certain documents concerning posthumous conception and birth of a child to be filed with a certain register of wills within certain times *under certain circumstances*; providing that a person who distributes or delivers certain property and a transferee of the property may not be liable under certain circumstances for certain claims by a child who is posthumously conceived; altering a certain definition; providing for the application of this Act; and generally relating to certain property and the posthumous conception and birth of a child.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 1–205(a) and 3–107(b)
Annotated Code of Maryland
(2011 Replacement Volume and 2012 Supplement)

BY adding to
Article – Estates and Trusts
Section 11–112
Annotated Code of Maryland
(2011 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, without amendments,
Article – Health – General
Section 20–111
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

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

Article – Estates and Trusts

1–205.

(a) A child includes:

(1) A legitimate child, an adopted child, and an illegitimate child to the extent provided in §§ 1–206 through 1–208 of this subtitle; and

(2) A child conceived from the genetic material of a person after the death of the person if:

(i) The person consented in a written record to use of the person's genetic material for posthumous conception in accordance with the requirements of § 20–111 of the Health – General Article; ~~and~~

(ii) The person consented in a written record to be the parent of a child posthumously conceived using the person's genetic material;

(III) THE CHILD IS BORN WITHIN 2 YEARS OF THE PERSON'S DEATH; AND

(IV) WITH RESPECT TO ANY TRUST, ~~IF~~ THE PERSON WAS THE CREATOR OF THE TRUST AND THE TRUST BECAME IRREVOCABLE ON OR AFTER OCTOBER 1, 2012.

3–107.

(b) No other after-born relation may be considered as entitled to distribution in the relation's own right unless:

(1) The decedent had consented in a written record to use of the decedent's genetic material for posthumous conception in accordance with the requirements of § 20–111 of the Health – General Article;

(2) The [person] **DECEDENT** consented in a written record to be the parent of a child posthumously conceived using the person's genetic material; and

(3) The child posthumously conceived using the decedent's genetic material is born within 2 years after the death of the decedent.

11–112.

(A) ~~THE~~ IF A DECEDENT CONSENTED IN A WRITTEN RECORD TO USE OF THE DECEDENT'S GENETIC MATERIAL FOR POSTHUMOUS CONCEPTION IN ACCORDANCE WITH THE REQUIREMENTS OF § 20–111 OF THE HEALTH – GENERAL ARTICLE, THE FOLLOWING SHALL BE FILED WITH THE REGISTER OF WILLS FOR THE COUNTY IN WHICH THE DECEDENT'S ESTATE IS PROBATED IN THE STATE OR, IF THERE IS NO PROBATE ESTATE FILED, WITH THE REGISTER OF WILLS FOR THE COUNTY IN WHICH THE DECEDENT WAS DOMICILED IN THE STATE AT THE DATE OF DEATH:

(1) A COPY OF ~~THE~~ A POSTHUMOUSLY CONCEIVED CHILD'S BIRTH RECORD; AND

(2) THE WRITTEN CONSENTS REQUIRED BY § 1-205(A)(2) OR § 3-107(B) OF THIS ARTICLE.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE WRITTEN CONSENTS REQUIRED BY § 1-205(A)(2) OR § 3-107(B) OF THIS ARTICLE SHALL BE FILED ~~AS DESCRIBED~~ UNDER SUBSECTION (A) OF THIS SECTION WITHIN 6 MONTHS ~~OF~~ AFTER THE DATE OF THE DECEDENT'S DEATH.

(2) WITH RESPECT TO A DECEDENT WHO DIES BETWEEN OCTOBER 1, 2012, AND MAY 30, 2013, INCLUSIVE, THE WRITTEN CONSENTS REQUIRED BY § 1-205(A)(2) OR § 3-107(B) OF THIS ARTICLE SHALL BE FILED ~~AS DESCRIBED~~ UNDER SUBSECTION (A) OF THIS SECTION BY DECEMBER 1, 2013.

(3) ~~THE~~ A COPY OF ~~THE~~ A POSTHUMOUSLY CONCEIVED CHILD'S BIRTH RECORD SHALL BE FILED WITHIN 2 YEARS AND 60 DAYS ~~OF~~ AFTER THE DATE OF THE DECEDENT'S DEATH.

(C) ABSENT THE FILING ~~OF~~ AS REQUIRED IN THIS SECTION OF ~~THE~~ A POSTHUMOUSLY CONCEIVED CHILD'S BIRTH RECORD AND THE WRITTEN CONSENTS REQUIRED BY § 1-205(A)(2) OR § 3-107(B) OF THIS ARTICLE:

(1) A PERSON HOLDING PROPERTY THAT PASSES BY REASON OF THE DEATH OF THE DECEDENT MAY DISTRIBUTE OR DELIVER THE PROPERTY WITHOUT LIABILITY FOR A CLAIM BY ANY POSTHUMOUSLY CONCEIVED CHILD UNKNOWN TO THE PERSON; AND

(2) THE TRANSFEREE OF ANY SUCH PROPERTY SHALL BE ENTITLED TO RECEIVE THE PROPERTY WITHOUT LIABILITY FOR A CLAIM BY ANY POSTHUMOUSLY CONCEIVED CHILD UNKNOWN TO THE TRANSFEREE.

Article – Health – General

20-111.

(a) (1) This section applies to the use of sperm or eggs from a donor known to the individual who intends to become a parent through the use of the sperm or eggs.

(2) This section does not apply to the use of sperm or eggs donated to a tissue bank or fertility clinic by a donor who intended to remain anonymous either

indefinitely or until a child that results from the use of the sperm or eggs becomes an adult.

(b) A person may not use sperm or eggs from a known donor for the purpose of assisted reproduction, if:

(1) The person knows that the known donor died and did not give consent for the posthumous use of the sperm or eggs; or

(2) The donor or the individual who intends to become a parent through the use of the sperm or eggs receives any remuneration for the donation or use of the sperm or eggs.

(c) A donor's consent to the posthumous use of the donor's sperm or eggs given on or after October 1, 2012 is not valid unless it is:

(1) In writing; and

(2) Signed by the donor or by some other person for the donor, in the presence of the donor, and at the express direction of the donor.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) For a first offense, a fine not exceeding \$1,000; and

(2) For a second or subsequent offense, a fine not exceeding \$5,000.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only to a child of a decedent who dies on or after October 1, 2012, and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2013.

Approved by the Governor, May 16, 2013.