

# HOUSE BILL 857

N2

3lr1921

---

By: **Delegate Waldstreicher**

Introduced and read first time: February 7, 2013

Assigned to: Judiciary

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Posthumously Conceived Child**

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

11 BY repealing and reenacting, with amendments,  
12 Article – Estates and Trusts  
13 Section 1–205(a) and 3–107(b)  
14 Annotated Code of Maryland  
15 (2011 Replacement Volume and 2012 Supplement)

16 BY adding to  
17 Article – Estates and Trusts  
18 Section 11–112  
19 Annotated Code of Maryland  
20 (2011 Replacement Volume and 2012 Supplement)

21 BY repealing and reenacting, without amendments,  
22 Article – Health – General  
23 Section 20–111  
24 Annotated Code of Maryland  
25 (2009 Replacement Volume and 2012 Supplement)

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

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Estates and Trusts**

2 1–205.

3 (a) A child includes:

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

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

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

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

13 **(III) THE CHILD IS BORN WITHIN 2 YEARS OF THE PERSON’S**  
14 **DEATH; AND**

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

18 3–107.

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

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

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

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

28 **11–112.**

29 **(A) THE FOLLOWING SHALL BE FILED WITH THE REGISTER OF WILLS**  
30 **FOR THE COUNTY IN WHICH THE DECEDENT’S ESTATE IS PROBATED IN THE**

1 STATE OR, IF THERE IS NO PROBATE ESTATE FILED, WITH THE REGISTER OF  
2 WILLS FOR THE COUNTY IN WHICH THE DECEDENT WAS DOMICILED IN THE  
3 STATE AT THE DATE OF DEATH:

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

6 (2) THE WRITTEN CONSENTS REQUIRED BY § 1-205(A)(2) OR §  
7 3-107(B) OF THIS ARTICLE.

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

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

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

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

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

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

29 **Article – Health – General**

30 20-111.

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

1           (2) This section does not apply to the use of sperm or eggs donated to a  
2 tissue bank or fertility clinic by a donor who intended to remain anonymous either  
3 indefinitely or until a child that results from the use of the sperm or eggs becomes an  
4 adult.

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

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

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

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

14           (1) In writing; and

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

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

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

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

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

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