

HOUSE BILL 857

N2

3lr1921

By: **Delegate Waldstreicher**

Introduced and read first time: February 7, 2013

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2013

CHAPTER _____

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

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 Section 20–111
2 Annotated Code of Maryland
3 (2009 Replacement Volume and 2012 Supplement)

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

6 **Article – Estates and Trusts**

7 1–205.

8 (a) A child includes:

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

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

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

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

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

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

23 3–107.

24 (b) No other after–born relation may be considered as entitled to distribution
25 in the relation’s own right unless:

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

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

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

3 **11-112.**

4 **(A) THE FOLLOWING SHALL BE FILED WITH THE REGISTER OF WILLS**
5 **FOR THE COUNTY IN WHICH THE DECEDENT'S ESTATE IS PROBATED IN THE**
6 **STATE OR, IF THERE IS NO PROBATE ESTATE FILED, WITH THE REGISTER OF**
7 **WILLS FOR THE COUNTY IN WHICH THE DECEDENT WAS DOMICILED IN THE**
8 **STATE AT THE DATE OF DEATH:**

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

11 **(2) THE WRITTEN CONSENTS REQUIRED BY § 1-205(A)(2) OR §**
12 **3-107(B) OF THIS ARTICLE.**

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

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

21 **(3) THE COPY OF THE POSTHUMOUSLY CONCEIVED CHILD'S**
22 **BIRTH RECORD SHALL BE FILED WITHIN 2 YEARS AND 60 DAYS OF THE DATE OF**
23 **THE DECEDENT'S DEATH.**

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

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

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

1 **Article – Health – General**

2 20–111.

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

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

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

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

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

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

19 (1) In writing; and

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

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

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

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

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

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