

Chapter 649

(House Bill 101)

AN ACT concerning

Health – General – Posthumous Use of Donor Sperm and Eggs

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

BY repealing and reenacting, with amendments,

Article – Estates and Trusts

Section 1–205 and 3–107

Annotated Code of Maryland

(2011 Replacement Volume and 2011 Supplement)

BY adding to

Article – Health – General

Section 20–111

Annotated Code of Maryland

(2009 Replacement Volume and 2011 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] 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.

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

3–107.

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

(B) No other after–born relation may be considered as entitled to distribution in [his] 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 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.

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.

~~(A) (B)~~ A PERSON MAY NOT USE SPERM OR EGGS FROM A KNOWN DONOR ~~AFTER THE DONOR'S DEATH~~ FOR THE PURPOSE OF ASSISTED REPRODUCTION, ~~UNLESS THE DONOR PREVIOUSLY GAVE 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.

~~(B) (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; AND

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

~~(C) (D)~~ A PERSON WHO ~~KNOWINGLY~~ 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 take effect October 1, 2012.

Approved by the Governor, May 22, 2012.