

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 857
Judiciary

(Delegate Waldstreicher)

Judicial Proceedings

Estates and Trusts - Posthumously Conceived Child

This bill alters the generally applicable definition of a child in the Estates and Trusts Article with respect to a child conceived from the genetic material of a person after the death of the person. The bill also requires a written consent to the use of a person's genetic material for posthumous conception and a written consent to be the parent of the child, as well as a copy of a posthumously conceived child's birth record, to be filed with the register of wills within specified time periods after the decedent's death. The bill establishes protections for certain persons as specified, from a claim by a posthumously conceived child unknown to the person. The bill applies only to the child of a decedent who dies on or after October 1, 2012, and does not apply to a cause of action arising before the bill's effective date.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: The bill is not expected to have a direct, material impact on State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires that a posthumously conceived child be born within two years of the person's death under the generally applicable definition of a child. With regard to any trust for a child conceived posthumously as defined by the bill, the bill

requires that the person was the creator of the trust and the trust became irrevocable on or after October 1, 2012.

The bill also requires the written consents of a person to the use of the person's genetic material for posthumous conception and to be the parent of the child (both existing required consents) to be filed with the register of wills within six months after the decedent's death. With respect to a decedent who dies between October 1, 2012, and May 30, 2013, inclusive, the written consents must be filed by December 1, 2013. A copy of a posthumously conceived child's birth record must be filed with the register of wills within two years and 60 days after the decedent's death.

Absent the above-mentioned filings (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 is entitled to receive the property without liability for a claim by any posthumously conceived child unknown to the transferee.

Current Law: Pursuant to Chapter 649 of 2012 (HB 101), under the Estates and Trusts Article, the generally applicable definition of a child, for the purposes of construing provisions of the estates of decedents law and the terms of a will, includes a child conceived from the genetic material of a person after the death of the person if:

- the person consented in a written record to use of the person's genetic material for posthumous conception in accordance with specified requirements under the Health-General Article; and
- the person consented in a written record to be the parent of a child posthumously conceived using the person's genetic material.

Under provisions of the Estates and Trusts Article governing the distribution of any part of the net estate of a decedent not effectively disposed of by a decedent's will (intestate succession), a posthumously conceived child must be born within two years after the death of the decedent to inherit from the decedent's estate.

Background: The registers of wills indicate that the enactment of Chapter 649 created concern that estates could be held open indefinitely or be closed prematurely without a specific timeframe for notification of the register of wills of the possibility of a posthumously conceived child. The bill also is intended to make the generally applicable definition of a child in the Estates and Trusts Article consistent with the intestate

succession provisions that require a posthumously conceived child to have been born within two years of the decedent's death in order to inherit from the estate of the decedent.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Register of Wills, Maryland State Bar Association (Estate and Trust Law Section), Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2013
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