



Sen. John G. Mulroe

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1 AMENDMENT TO SENATE BILL 883

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 883 on page 6, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Probate Act of 1975 is amended by changing  
6 Sections 2-2 and 2-3 as follows:

7 (755 ILCS 5/2-2) (from Ch. 110 1/2, par. 2-2)

8 Sec. 2-2. Children born out of wedlock. The intestate real  
9 and personal estate of a resident decedent who was a child born  
10 out of wedlock at the time of death and the intestate real  
11 estate in this State of a nonresident decedent who was a child  
12 born out of wedlock at the time of death, after all just claims  
13 against his estate are fully paid, descends and shall be  
14 distributed as provided in Section 2-1, subject to Section  
15 2-6.5 of this Act, if both parents are eligible parents. As  
16 used in this Section, "eligible parent" means a parent of the

1 decedent who, during the decedent's lifetime, acknowledged the  
2 decedent as the parent's child, established a parental  
3 relationship with the decedent, and supported the decedent as  
4 the parent's child. "Eligible parents" who are in arrears of in  
5 excess of one year's child support obligations shall not  
6 receive any property benefit or other interest of the decedent  
7 unless and until a court of competent jurisdiction makes a  
8 determination as to the effect on the deceased of the arrearage  
9 and allows a reduced benefit. In no event shall the reduction  
10 of the benefit or other interest be less than the amount of  
11 child support owed for the support of the decedent at the time  
12 of death. The court's considerations shall include but are not  
13 limited to the considerations in subsections (1) through (3) of  
14 Section 2-6.5 of this Act.

15 If neither parent is an eligible parent, the intestate real  
16 and personal estate of a resident decedent who was a child born  
17 out of wedlock at the time of death and the intestate real  
18 estate in this State of a nonresident decedent who was a child  
19 born out of wedlock at the time of death, after all just claims  
20 against his or her estate are fully paid, descends and shall be  
21 distributed as provided in Section 2-1, but the parents of the  
22 decedent shall be treated as having predeceased the decedent.

23 If only one parent is an eligible parent, the intestate  
24 real and personal estate of a resident decedent who was a child  
25 born out of wedlock at the time of death and the intestate real  
26 estate in this State of a nonresident decedent who was a child

1 born out of wedlock at the time of death, after all just claims  
2 against his or her estate are fully paid, subject to Section  
3 2-6.5 of this Act, descends and shall be distributed as  
4 follows:

5 (a) If there is a surviving spouse and also a descendant of  
6 the decedent: 1/2 of the entire estate to the surviving spouse  
7 and 1/2 to the decedent's descendants per stirpes.

8 (b) If there is no surviving spouse but a descendant of the  
9 decedent: the entire estate to the decedent's descendants per  
10 stirpes.

11 (c) If there is a surviving spouse but no descendant of the  
12 decedent: the entire estate to the surviving spouse.

13 (d) If there is no surviving spouse or descendant but the  
14 eligible parent or a descendant of the eligible parent of the  
15 decedent: the entire estate to the eligible parent and the  
16 eligible parent's descendants, allowing 1/2 to the eligible  
17 parent and 1/2 to the eligible parent's descendants per  
18 stirpes.

19 (e) If there is no surviving spouse, descendant, eligible  
20 parent, or descendant of the eligible parent of the decedent,  
21 but a grandparent on the eligible parent's side of the family  
22 or descendant of such grandparent of the decedent: the entire  
23 estate to the decedent's grandparents on the eligible parent's  
24 side of the family in equal parts, or to the survivor of them,  
25 or if there is none surviving, to their descendants per  
26 stirpes.

1 (f) If there is no surviving spouse, descendant, eligible  
2 parent, descendant of the eligible parent, grandparent on the  
3 eligible parent's side of the family, or descendant of such  
4 grandparent of the decedent: the entire estate to the  
5 decedent's great-grandparents on the eligible parent's side of  
6 the family in equal parts or to the survivor of them, or if  
7 there is none surviving, to their descendants per stirpes.

8 (g) If there is no surviving spouse, descendant, eligible  
9 parent, descendant of the eligible parent, grandparent on the  
10 eligible parent's side of the family, descendant of such  
11 grandparent, great-grandparent on the eligible parent's side  
12 of the family, or descendant of such great-grandparent of the  
13 decedent: the entire estate in equal parts to the nearest  
14 kindred of the eligible parent of the decedent in equal degree  
15 (computing by the rules of the civil law) and without  
16 representation.

17 (h) If there is no surviving spouse, descendant, or  
18 eligible parent of the decedent and no known kindred of the  
19 eligible parent of the decedent: the real estate escheats to  
20 the county in which it is located; the personal estate  
21 physically located within this State and the personal estate  
22 physically located or held outside this State which is the  
23 subject of ancillary administration within this State escheats  
24 to the county of which the decedent was a resident or, if the  
25 decedent was not a resident of this State, to the county in  
26 which it is located; all other personal property of the

1 decedent of every class and character, wherever situate, or the  
2 proceeds thereof, shall escheat to this State and be delivered  
3 to the State Treasurer of this State pursuant to the Uniform  
4 Disposition of Unclaimed Property Act.

5 For purposes of inheritance, the changes made by this  
6 amendatory Act of 1998 apply to all decedents who die on or  
7 after the effective date of this amendatory Act of 1998. For  
8 the purpose of determining the property rights of any person  
9 under any instrument, the changes made by this amendatory Act  
10 of 1998 apply to all instruments executed on or after the  
11 effective date of this amendatory Act of 1998.

12 A child born out of wedlock is heir of his mother and of  
13 any maternal ancestor and of any person from whom his mother  
14 might have inherited, if living; and the descendants of a  
15 person who was a child born out of wedlock shall represent such  
16 person and take by descent any estate which the parent would  
17 have taken, if living. If a decedent has acknowledged paternity  
18 of a child born out of wedlock, ~~or~~ if during his lifetime or  
19 after his death a decedent has been adjudged to be the father  
20 of a child born out of wedlock, or if a decedent is a parent of  
21 a child born out of wedlock as provided in Section 2-3 of this  
22 Act, that person is heir of his father and of any paternal  
23 ancestor and of any person from whom his father might have  
24 inherited, if living; and the descendants of a person who was a  
25 child born out of wedlock shall represent that person and take  
26 by descent any estate which the parent would have taken, if

1 living. If during his lifetime the decedent was adjudged to be  
2 the father of a child born out of wedlock by a court of  
3 competent jurisdiction, an authenticated copy of the judgment  
4 is sufficient proof of the paternity; but in all other cases  
5 paternity must be proved by clear and convincing evidence. A  
6 person who was a child born out of wedlock whose parents  
7 intermarry and who is acknowledged by the father as the  
8 father's child is a lawful child of the father. After a child  
9 born out of wedlock is adopted, that person's relationship to  
10 his or her adopting and natural parents shall be governed by  
11 Section 2-4 of this Act. For purposes of inheritance, the  
12 changes made by this amendatory Act of 1997 apply to all  
13 decedents who die on or after January 1, 1998. For the purpose  
14 of determining the property rights of any person under any  
15 instrument, the changes made by this amendatory Act of 1997  
16 apply to all instruments executed on or after January 1, 1998.  
17 (Source: P.A. 94-229, eff. 1-1-06.)

18 (755 ILCS 5/2-3) (from Ch. 110 1/2, par. 2-3)

19 Sec. 2-3. Posthumous child.

20 (a) For purposes of the descent and distribution of  
21 property passing by intestate succession under this Act, a ~~A~~  
22 posthumous child of a decedent shall receive the same share of  
23 an estate as if the child had been born in in wedlock during  
24 the decedent's lifetime, but only if: (1) the ~~provided that~~  
25 ~~such~~ posthumous child is ~~shall have been~~ in utero at the

1 decedent's death; or (2) in the case of a posthumous child not  
2 in utero at the decedent's death, the conditions of subsection  
3 (b) are met.

4 (b) A posthumous child of a decedent not in utero at the  
5 decedent's death meets the requirements of this subsection (b)  
6 only if all of the following conditions apply:

7 (1) The child is born of the decedent's gametes,  
8 whether those gametes form an embryo before or after the  
9 decedent's death ("gametes").

10 (2) The child is born within 36 months of the death of  
11 the decedent.

12 (3) The decedent had provided consent in writing to be  
13 a parent of any child born of such gametes posthumously and  
14 had not revoked the consent prior to death.

15 (4) The administrator of the estate receives a signed  
16 and acknowledged written notice with a copy of the written  
17 consent attached within 6 months of the date of issuance of  
18 a certificate of the decedent's death or entry of a  
19 judgment determining the fact of the decedent's death,  
20 whichever event occurs first, from a person to whom such  
21 consent applies that:

22 (i) the decedent's gametes exist;

23 (ii) the person has the intent to use the gametes  
24 in a manner that could result in a child being born  
25 within 36 months of the death of the decedent; and

26 (iii) the person has the intent to raise any such

1           child as his or her child.

2           The requirements of this subsection impose no duty on the  
3 administrator of an estate to provide notice of death to any  
4 person and apply without regard to when any person receives  
5 notice of the decedent's death.

6           (c) For the purpose of determining the property rights of  
7 any person under any instrument, a posthumous child of a  
8 decedent who is in utero at the decedent's death shall be  
9 treated as a child of the decedent unless the intent to exclude  
10 the child is demonstrated by the express terms of the  
11 instrument by clear and convincing evidence.

12           (d) For the purpose of determining the property rights of  
13 any person under any instrument, a posthumous child of a  
14 decedent not in utero at the decedent's death shall not be  
15 treated as a child of the decedent unless one of the following  
16 conditions applies:

17           (1) the intent to include the child is demonstrated by  
18 the express terms of the instrument by clear and convincing  
19 evidence; or

20           (2) the fiduciary or other holder of the property  
21 treated the child as a child of the decedent for purposes  
22 of a division or distribution of property made prior to  
23 January 1, 2018 under the instrument based on a good faith  
24 interpretation of Illinois law regarding the right of the  
25 child to take property under the instrument.

26           (e) For purposes of subsection (d), the use in the



1 instrument of terms such as "child", "children", "grandchild",  
2 "grandchildren", "descendants", and "issue", whether or not  
3 modified by phrases such as "biological", "genetic", "born to",  
4 or "of the body" shall not alone constitute clear and  
5 convincing evidence of an intent to include posthumous children  
6 not in utero at the decedent's death. An intent to exclude  
7 posthumous children not in utero at the decedent's death shall  
8 be presumed with respect to any instrument that does not  
9 address specifically how and when the class of posthumous  
10 children are to be determined with respect to each division or  
11 distribution provided for under the instrument as well as whose  
12 posthumous children are to be included and when a posthumous  
13 child has to be born to be considered a beneficiary with  
14 respect to a particular division or distribution.

15 (f) No fiduciary or other person shall be liable to any  
16 other person for any action taken or benefit received prior to  
17 the effective date of this amendatory Act of the 100th General  
18 Assembly that was based on a good faith interpretation of  
19 Illinois law regarding the right of posthumous children to take  
20 property by intestate succession or under an instrument. If  
21 after the effective date of this amendatory Act of the 100th  
22 General Assembly the administrator of an estate does not  
23 receive the written notice required by subsection (b), the  
24 administrator of the estate shall not be liable to any  
25 posthumous child not in utero at the decedent's death or any  
26 person claiming for or through the child.

1       (g) The changes made to subsection (a) of this Section by  
2 this amendatory Act of the 100th General Assembly apply to the  
3 estates of all decedents who die on or after January 1, 2018.  
4 For the purpose of determining the property rights of any  
5 person under any instrument, the changes made by this  
6 amendatory Act of the 100th General Assembly apply to all  
7 executed instruments in existence on or after January 1, 2018.  
8 (Source: P.A. 99-85, eff. 1-1-16.)".