



Sen. John G. Mulroe

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LRB100 08695 HEP 23136 a

1 AMENDMENT TO SENATE BILL 883

2 AMENDMENT NO. _____. Amend Senate Bill 883 by replacing
3 everything after the enacting clause with the following:

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

6 (755 ILCS 5/2-3) (from Ch. 110 1/2, par. 2-3)

7 Sec. 2-3. Posthumous child.

8 (a) For purposes of the descent and distribution of
9 property passing by intestate succession under this Act, a A
10 posthumous child of a decedent shall receive the same share of
11 an estate as if the child had been born in in wedlock during
12 the decedent's lifetime, but only if: (1) the ~~;~~ provided that
13 such posthumous child is shall have been in utero at the
14 decedent's death; or (2) in the case of a posthumous child not
15 in utero at the decedent's death, the conditions of subsection
16 (b) are met.

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

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

7 (2) The child is born within 36 months of the death of
8 the decedent.

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

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

19 (i) the decedent's gametes exist;

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

23 (iii) the person has the intent to raise any such
24 child as his or her child.

25 The requirements of this subsection impose no duty on the
26 administrator of an estate to provide notice of death to any

1 person and apply without regard to when any person receives
2 notice of the decedent's death.

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

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

14 (1) the intent to include the child is demonstrated by
15 the express terms of the instrument by clear and convincing
16 evidence; or

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

23 (e) For purposes of subsection (d), the use in the
24 instrument of terms such as "child", "children", "grandchild",
25 "grandchildren", "descendants", and "issue", whether or not
26 modified by phrases such as "biological", "genetic", "born to",

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

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

24 (g) The changes made to subsection (a) of this Section by
25 this amendatory Act of the 100th General Assembly apply to the
26 estates of all decedents who die on or after January 1, 2018.

1 For the purpose of determining the property rights of any
2 person under any instrument, the changes made by this
3 amendatory Act of the 100th General Assembly apply to all
4 instruments executed before, on, or after the effective date of
5 this amendatory Act of the 100th General Assembly.

6 (Source: P.A. 99-85, eff. 1-1-16.)".