

SB3551



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3551

Introduced 2/8/2012, by Sen. Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

755 ILCS 5/2-4

from Ch. 110 1/2, par. 2-4

Amends the Probate Act of 1975. In provisions concerning inheritance from or through a natural parent and for determining the property rights of any person under any instrument, provides that an adopted child is not a child of a natural parent whose parental rights were terminated by the adoption (rather than that an adopted child is not a child of a natural parent), nor is the child a descendant of a natural parent or of any lineal or collateral kindred of a natural parent, unless specified conditions apply.

LRB097 17384 JLS 62586 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

6 (755 ILCS 5/2-4) (from Ch. 110 1/2, par. 2-4)

7 Sec. 2-4. Adopted child.

8 (a) An adopted child is a descendant of the adopting parent
9 for purposes of inheritance from the adopting parent and from
10 the lineal and collateral kindred of the adopting parent and
11 for the purpose of determining the property rights of any
12 person under any instrument, unless the adopted child is
13 adopted after attaining the age of 18 years and the child never
14 resided with the adopting parent before attaining the age of 18
15 years, in which case the adopted child is a child of the
16 adopting parent but is not a descendant of the adopting parent
17 for the purposes of inheriting from the lineal or collateral
18 kindred of the adopting parent. An adopted child and the
19 descendants of the child who is related to a decedent through
20 more than one line of relationship shall be entitled only to
21 the share based on the relationship which entitles the child or
22 descendant to the largest share. The share to which the child
23 or descendant is not entitled shall be distributed in the same

1 manner as if the child or descendant never existed. For
2 purposes of inheritance, the changes made by this amendatory
3 Act of 1997 apply to all decedents who die on or after January
4 1, 1998. For the purpose of determining the property rights of
5 any person under any instrument, the changes made by this
6 amendatory Act of 1997 apply to all instruments executed on or
7 after January 1, 1998.

8 (b) An adopting parent and the lineal and collateral
9 kindred of the adopting parent shall inherit property from an
10 adopted child to the exclusion of the natural parent and the
11 lineal and collateral kindred of the natural parent in the same
12 manner as though the adopted child were a natural child of the
13 adopting parent, except that the natural parent and the lineal
14 or collateral kindred of the natural parent shall take from the
15 child and the child's kindred the property that the child has
16 taken from or through the natural parent or the lineal or
17 collateral kindred of the natural parent by gift, by will or
18 under intestate laws.

19 (c) For purposes of inheritance from the child and his or
20 her kindred (1) the person who at the time of the adoption is
21 the spouse of an adopting parent is an adopting parent and (2)
22 a child is adopted when the child has been or is declared by
23 any court to have been adopted or has been or is declared or
24 assumed to be the adopted child of the testator or grantor in
25 any instrument bequeathing or giving property to the child.

26 (d) For purposes of inheritance from or through a natural

1 parent and for determining the property rights of any person
2 under any instrument, an adopted child is not a child of a
3 natural parent whose parental rights were terminated by the
4 adoption, nor is the child a descendant of a natural parent or
5 of any lineal or collateral kindred of a natural parent, unless
6 one or more of the following conditions apply:

7 (1) The child is adopted by a descendant or a spouse of
8 a descendant of a great-grandparent of the child, in which
9 case the adopted child is a child of both natural parents.

10 (2) A natural parent of the adopted child died before
11 the child was adopted, in which case the adopted child is a
12 child of that deceased parent and an heir of the lineal and
13 collateral kindred of that deceased parent.

14 (3) The contrary intent is demonstrated by the terms of
15 the instrument by clear and convincing evidence.

16 An heir of an adopted child who, by reason of this
17 subsection (d), is not a child of a natural parent is also not
18 an heir of that natural parent or of the lineal or collateral
19 kindred of that natural parent. A fiduciary who has actual
20 knowledge that a person has been adopted, but who has no actual
21 knowledge that any of paragraphs (1), (2), or (3) of this
22 subsection apply to the adoption, shall have no liability for
23 any action taken or omitted in good faith on the assumption
24 that the person is not a descendant or heir of the natural
25 parent. The preceding sentence is intended to affect only the
26 liability of the fiduciary and shall not affect the property

1 rights of any person.

2 For purposes of inheritance, the changes made by this
3 amendatory Act of 1997 apply to all decedents who die on or
4 after January 1, 1998. For the purpose of determining the
5 property rights of any person under any instrument, the changes
6 made by this amendatory Act of 1997 apply to all instruments
7 executed on or after January 1, 1998.

8 (e) For the purpose of determining the property rights of
9 any person under any instrument executed on or after September
10 1, 1955, an adopted child is deemed a child born to the
11 adopting parent unless the contrary intent is demonstrated by
12 the terms of the instrument by clear and convincing evidence.

13 (f) After September 30, 1989, a child adopted at any time
14 before or after that date is deemed a child born to the
15 adopting parent for the purpose of determining the property
16 rights of any person under any instrument executed before
17 September 1, 1955, unless one or more of the following
18 conditions applies:

19 (1) The intent to exclude such child is demonstrated by
20 the terms of the instrument by clear and convincing
21 evidence.

22 (2) An adopting parent of an adopted child, in the
23 belief that the adopted child would not take property under
24 an instrument executed before September 1, 1955, acted to
25 substantially benefit such adopted child when compared to
26 the benefits conferred by such parent on the child or

1 children born to the adopting parent. For purposes of this
2 paragraph:

3 (i) "Acted" means that the adopting parent made one
4 or more gifts during life requiring the filing of a
5 federal gift tax return or at death (including gifts
6 which take effect at death), or exercised or failed to
7 exercise powers of appointment or other legal rights,
8 or acted or failed to act in any other way.

9 (ii) Any action which substantially benefits the
10 adopted child shall be presumed to have been made in
11 such a belief unless a contrary intent is demonstrated
12 by clear and convincing evidence.

13 (g) No fiduciary or other person shall be liable to any
14 other person for any action taken or benefit received prior to
15 October 1, 1989, under any instrument executed before September
16 1, 1955, that was based on a good faith interpretation of
17 Illinois law regarding the right of adopted children to take
18 property under such an instrument.

19 (h) No fiduciary under any instrument executed before
20 September 1, 1955, shall have any obligation to determine
21 whether any adopted child has become a taker under such
22 instrument due to the application of subsection (f) unless such
23 fiduciary has received, on or before the "notice date", as
24 defined herein, written evidence that such adopted child has
25 become a taker of property. A fiduciary who has received such
26 written evidence shall determine in good faith whether or not

1 any of the conditions specified in subsection (f) exists but
2 shall have no obligation to inquire further into whether such
3 adopted child is a taker of property pursuant to such
4 subsection. Such written evidence shall include a sworn
5 statement by the adopted child or his or her parent or guardian
6 that such child is adopted and to the best of the knowledge and
7 belief of such adopted child or such parent or guardian, none
8 of the conditions specified in such subsection exists. The
9 "notice date" shall be the later of February 1, 1990, or the
10 expiration of 90 days after the date on which the adopted child
11 becomes a taker of property pursuant to the terms of any
12 instrument executed before September 1, 1955.

13 (i) A fiduciary shall advise all persons known to him or
14 her to be subject to these provisions of the existence of the
15 right to commence a judicial proceeding to prevent the adopted
16 child from being a taker of property under the instrument.

17 (Source: P.A. 90-237, eff. 1-1-98.)