

AN ACT concerning civil law.

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

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

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

Sec. 2-3. Posthumous child.

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

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

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

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

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

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

(i) the decedent's gametes exist;

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

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

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

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

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

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

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

(e) For purposes of subsection (d), the use in the instrument of terms such as "child", "children", "grandchild", "grandchildren", "descendants", and "issue", whether or not modified by phrases such as "biological", "genetic", "born to", or "of the body" shall not alone constitute clear and convincing evidence of an intent to include posthumous children not in utero at the decedent's death. An intent to exclude posthumous children not in utero at the decedent's death shall be presumed with respect to any instrument that does not address specifically how and when the class of posthumous children are to be determined with respect to each division or distribution provided for under the instrument as well as whose

posthumous children are to be included and when a posthumous child has to be born to be considered a beneficiary with respect to a particular division or distribution.

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

(g) The changes made to subsection (a) of this Section by this amendatory Act of the 100th General Assembly apply to the estates of all decedents who die on or after January 1, 2018. For the purpose of determining the property rights of any person under any instrument, the changes made by this amendatory Act of the 100th General Assembly apply to all instruments executed before, on, or after the effective date of this amendatory Act of the 100th General Assembly.

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