

**100TH GENERAL ASSEMBLY****State of Illinois****2017 and 2018****SB0883**

Introduced 2/7/2017, by Sen. John G. Mulroe

**SYNOPSIS AS INTRODUCED:**755 ILCS 5/2-2  
755 ILCS 5/2-3from Ch. 110 1/2, par. 2-2  
from Ch. 110 1/2, par. 2-3

Amends the Probate Act of 1975. Provides that for purposes of determining the rights to property passing upon the death of a decedent under any instrument or the intestacy rules of this State, unless a contrary intention is expressly stated in the instrument: (1) the decedent is a parent of a posthumous child in utero at the time of the decedent's death; and (2) if a decedent had consented in writing to be a parent of any child born of his or her gametes posthumously, and died before the insemination of the individual's gametes or embryo transfer, the decedent is a parent of any resulting child born within 36 months of the death of the decedent, but only if the holder of property subject to the instrument receives timely written notice, from a person to whom such consent applies that: (i) the decedent's gametes exist; and (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. Provides that if the holder of the property does not receive the written notice, the holder of the property shall not be liable to the posthumously conceived child or any person claiming for or through the child for any property passing upon the death of the decedent. Contains applicability language.

LRB100 08695 HEP 18830 b

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 Sections 2-2 and 2-3 as follows:

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

7 Sec. 2-2. Children born out of wedlock. The intestate real  
8 and personal estate of a resident decedent who was a child born  
9 out of wedlock at the time of death and the intestate real  
10 estate in this State of a nonresident decedent who was a child  
11 born out of wedlock at the time of death, after all just claims  
12 against his estate are fully paid, descends and shall be  
13 distributed as provided in Section 2-1, subject to Section  
14 2-6.5 of this Act, if both parents are eligible parents. As  
15 used in this Section, "eligible parent" means a parent of the  
16 decedent who, during the decedent's lifetime, acknowledged the  
17 decedent as the parent's child, established a parental  
18 relationship with the decedent, and supported the decedent as  
19 the parent's child. "Eligible parents" who are in arrears of in  
20 excess of one year's child support obligations shall not  
21 receive any property benefit or other interest of the decedent  
22 unless and until a court of competent jurisdiction makes a  
23 determination as to the effect on the deceased of the arrearage

1 and allows a reduced benefit. In no event shall the reduction  
2 of the benefit or other interest be less than the amount of  
3 child support owed for the support of the decedent at the time  
4 of death. The court's considerations shall include but are not  
5 limited to the considerations in subsections (1) through (3) of  
6 Section 2-6.5 of this Act.

7 If neither parent is an eligible parent, the intestate real  
8 and personal estate of a resident decedent who was a child born  
9 out of wedlock at the time of death and the intestate real  
10 estate in this State of a nonresident decedent who was a child  
11 born out of wedlock at the time of death, after all just claims  
12 against his or her estate are fully paid, descends and shall be  
13 distributed as provided in Section 2-1, but the parents of the  
14 decedent shall be treated as having predeceased the decedent.

15 If only one parent is an eligible parent, the intestate  
16 real and personal estate of a resident decedent who was a child  
17 born 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, subject to Section  
21 2-6.5 of this Act, descends and shall be distributed as  
22 follows:

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

26 (b) If there is no surviving spouse but a descendant of the

1 decedent: the entire estate to the decedent's descendants per  
2 stirpes.

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

5 (d) If there is no surviving spouse or descendant but the  
6 eligible parent or a descendant of the eligible parent of the  
7 decedent: the entire estate to the eligible parent and the  
8 eligible parent's descendants, allowing 1/2 to the eligible  
9 parent and 1/2 to the eligible parent's descendants per  
10 stirpes.

11 (e) If there is no surviving spouse, descendant, eligible  
12 parent, or descendant of the eligible parent of the decedent,  
13 but a grandparent on the eligible parent's side of the family  
14 or descendant of such grandparent of the decedent: the entire  
15 estate to the decedent's grandparents on the eligible parent's  
16 side of the family in equal parts, or to the survivor of them,  
17 or if there is none surviving, to their descendants per  
18 stirpes.

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

26 (g) If there is no surviving spouse, descendant, eligible

1 parent, descendant of the eligible parent, grandparent on the  
2 eligible parent's side of the family, descendant of such  
3 grandparent, great-grandparent on the eligible parent's side  
4 of the family, or descendant of such great-grandparent of the  
5 decedent: the entire estate in equal parts to the nearest  
6 kindred of the eligible parent of the decedent in equal degree  
7 (computing by the rules of the civil law) and without  
8 representation.

9 (h) If there is no surviving spouse, descendant, or  
10 eligible parent of the decedent and no known kindred of the  
11 eligible parent of the decedent: the real estate escheats to  
12 the county in which it is located; the personal estate  
13 physically located within this State and the personal estate  
14 physically located or held outside this State which is the  
15 subject of ancillary administration within this State escheats  
16 to the county of which the decedent was a resident or, if the  
17 decedent was not a resident of this State, to the county in  
18 which it is located; all other personal property of the  
19 decedent of every class and character, wherever situate, or the  
20 proceeds thereof, shall escheat to this State and be delivered  
21 to the State Treasurer of this State pursuant to the Uniform  
22 Disposition of Unclaimed Property Act.

23 For purposes of inheritance, the changes made by this  
24 amendatory Act of 1998 apply to all decedents who die on or  
25 after the effective date of this amendatory Act of 1998. For  
26 the purpose of determining the property rights of any person

1 under any instrument, the changes made by this amendatory Act  
2 of 1998 apply to all instruments executed on or after the  
3 effective date of this amendatory Act of 1998.

4 A child born out of wedlock is heir of his mother and of  
5 any maternal ancestor and of any person from whom his mother  
6 might have inherited, if living; and the descendants of a  
7 person who was a child born out of wedlock shall represent such  
8 person and take by descent any estate which the parent would  
9 have taken, if living. If a decedent has acknowledged paternity  
10 of a child born out of wedlock, ~~or~~ if during his lifetime or  
11 after his death a decedent has been adjudged to be the father  
12 of a child born out of wedlock, or if a decedent is a parent of  
13 a child born out of wedlock as provided in Section 2-3 of this  
14 Act, that person is heir of his father and of any paternal  
15 ancestor and of any person from whom his father might have  
16 inherited, if living; and the descendants of a person who was a  
17 child born out of wedlock shall represent that person and take  
18 by descent any estate which the parent would have taken, if  
19 living. If during his lifetime the decedent was adjudged to be  
20 the father of a child born out of wedlock by a court of  
21 competent jurisdiction, an authenticated copy of the judgment  
22 is sufficient proof of the paternity; but in all other cases  
23 paternity must be proved by clear and convincing evidence. A  
24 person who was a child born out of wedlock whose parents  
25 intermarry and who is acknowledged by the father as the  
26 father's child is a lawful child of the father. After a child

1 born out of wedlock is adopted, that person's relationship to  
2 his or her adopting and natural parents shall be governed by  
3 Section 2-4 of this Act. For purposes of inheritance, the  
4 changes made by this amendatory Act of 1997 apply to all  
5 decedents who die on or after January 1, 1998. For the purpose  
6 of determining the property rights of any person under any  
7 instrument, the changes made by this amendatory Act of 1997  
8 apply to all instruments executed on or after January 1, 1998.

9 (Source: P.A. 94-229, eff. 1-1-06.)

10 (755 ILCS 5/2-3) (from Ch. 110 1/2, par. 2-3)

11 Sec. 2-3. Posthumous child.

12 (a) A posthumous child of a decedent shall receive the same  
13 share of an estate as if the child had been born in the  
14 decedent's lifetime, but only if: (1) the ~~;~~ ~~provided that such~~  
15 posthumous child ~~is shall have been~~ in utero at the decedent's  
16 death; or (2) the decedent would be a parent of the child under  
17 subsection (b) of this Section.

18 (b) As used in this subsection (b), "instrument" includes  
19 the rules of descent and distribution under Section 2-1 of this  
20 Act. For purposes of determining the rights to property passing  
21 upon the death of a decedent under any instrument, unless a  
22 contrary intention is expressly stated in the instrument: (1)  
23 the decedent is a parent of a posthumous child described in  
24 item (1) of subsection (a); and (2) if a decedent had provided  
25 consent as required in Section 706 of the Illinois Parentage

1 Act of 2015, the decedent is a parent of any resulting child  
2 born within 36 months of the death of the decedent, but only if  
3 the holder of property subject to the instrument receives  
4 written notice within 6 months of the date of issuance of a  
5 certificate of the decedent's death or entry of a judgment  
6 determining the fact of the decedent's death, whichever event  
7 occurs first, from a person to whom such consent applies that:

8 (i) the decedent's gametes exist; and

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

12 If the holder of the property does not receive the written  
13 notice as required by this subsection, the holder of the  
14 property shall not be liable to the posthumously conceived  
15 child or any person claiming for or through the child for any  
16 property passing upon the death of the decedent. For purposes  
17 of inheritance, the changes made to this Section by this  
18 amendatory Act of the 100th General Assembly apply to all  
19 decedents who die on or after January 1, 2018. For the purpose  
20 of determining the property rights of any person under any  
21 instrument, the changes made by this amendatory Act of the  
22 100th General Assembly apply to all instruments executed on or  
23 after January 1, 2018.

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