



Sen. John G. Mulroe

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LRB100 08695 HEP 23179 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 wedlock during the
12 decedent's lifetime, but only if: (1) the ~~;~~ ~~provided that such~~
13 posthumous child ~~is shall have been~~ in utero at the decedent's
14 death; or (2) in the case of a posthumous child not in utero at
15 the decedent's death, the conditions of subsection (b) are met.

16 (b) A posthumous child of a decedent not in utero at the

1 decedent's death meets the requirements of this subsection (b)
2 only if all of the following conditions apply:

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

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

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

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

18 (i) the decedent's gametes exist;

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

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

24 The requirements of this subsection impose no duty on the
25 administrator of an estate to provide notice of death to any
26 person and apply without regard to when any person receives

1 notice of the decedent's death.

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

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

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

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

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

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

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

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

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

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