

## Chapter 649

(House Bill 101)

AN ACT concerning

### Health – General – Posthumous Use of Donor Sperm and Eggs

FOR the purpose of prohibiting a person from using sperm or eggs from a known donor ~~after the donor's death~~ for the purpose of assisted reproduction, ~~except~~ under certain circumstances; establishing requirements for a certain consent; establishing certain penalties for a ~~certain~~ violation of certain provisions of this Act; providing for the application of certain provisions of this Act; altering the definition of "child", for purposes of certain provisions of law regarding inheritance, to include a child conceived from the genetic material of a person after the person's death under certain circumstances; providing that a certain after-born relation may not be considered as entitled to distribution in that relation's own right, unless the decedent had consented in a written record to use of the decedent's genetic material for posthumous conception in accordance with the requirements of a certain provision of law, the decedent consented in a written record to be the parent of a child posthumously conceived using the decedent's genetic material, and the child posthumously conceived was born within a certain period after the death of the decedent; making stylistic changes; and generally relating to the posthumous use of donor sperm and eggs.

BY repealing and reenacting, with amendments,

Article – Estates and Trusts

Section 1-205 and 3-107

Annotated Code of Maryland

(2011 Replacement Volume and 2011 Supplement)

BY adding to

Article – Health – General

Section 20-111

Annotated Code of Maryland

(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### Article – Estates and Trusts

1-205.

(A) A child includes:

(1) [a] A legitimate child, an adopted child, and an illegitimate child to the extent provided in §§ 1–206 through 1–208 of this subtitle; AND

(2) A CHILD CONCEIVED FROM THE GENETIC MATERIAL OF A PERSON AFTER THE DEATH OF THE PERSON IF:

(i) THE PERSON CONSENTED IN A WRITTEN RECORD TO USE OF THE PERSON’S GENETIC MATERIAL FOR POSTHUMOUS CONCEPTION IN ACCORDANCE WITH THE REQUIREMENTS OF § 20–111 OF THE HEALTH – GENERAL ARTICLE; AND

(ii) THE PERSON CONSENTED IN A WRITTEN RECORD TO BE THE PARENT OF A CHILD POSTHUMOUSLY CONCEIVED USING THE PERSON’S GENETIC MATERIAL.

(B) A child does not include a stepchild, a foster child, or a grandchild or more remote descendant.

3–107.

(A) A child of the decedent who is conceived before the death of the decedent, but born afterwards shall inherit as if [he] THE CHILD had been born in the lifetime of the decedent.

(B) No other after–born relation may be considered as entitled to distribution in [his] THE RELATION’S own right UNLESS:

(1) THE DECEDENT HAD CONSENTED IN A WRITTEN RECORD TO USE OF THE DECEDENT’S GENETIC MATERIAL FOR POSTHUMOUS CONCEPTION IN ACCORDANCE WITH THE REQUIREMENTS OF § 20–111 OF THE HEALTH – GENERAL ARTICLE;

(2) THE PERSON CONSENTED IN A WRITTEN RECORD TO BE THE PARENT OF A CHILD POSTHUMOUSLY CONCEIVED USING THE PERSON’S GENETIC MATERIAL; AND

(3) THE CHILD POSTHUMOUSLY CONCEIVED USING THE DECEDENT’S GENETIC MATERIAL IS BORN WITHIN 2 YEARS AFTER THE DEATH OF THE DECEDENT.

#### Article – Health – General

20–111.

**(A) (1) THIS SECTION APPLIES TO THE USE OF SPERM OR EGGS FROM A DONOR KNOWN TO THE INDIVIDUAL WHO INTENDS TO BECOME A PARENT THROUGH THE USE OF THE SPERM OR EGGS.**

**(2) THIS SECTION DOES NOT APPLY TO THE USE OF SPERM OR EGGS DONATED TO A TISSUE BANK OR FERTILITY CLINIC BY A DONOR WHO INTENDED TO REMAIN ANONYMOUS EITHER INDEFINITELY OR UNTIL A CHILD THAT RESULTS FROM THE USE OF THE SPERM OR EGGS BECOMES AN ADULT.**

**~~(A) (B)~~ A PERSON MAY NOT USE SPERM OR EGGS FROM A KNOWN DONOR ~~AFTER THE DONOR'S DEATH~~ FOR THE PURPOSE OF ASSISTED REPRODUCTION, ~~UNLESS THE DONOR PREVIOUSLY GAVE IF:~~**

**(1) THE PERSON KNOWS THAT THE KNOWN DONOR DIED AND DID NOT GIVE CONSENT FOR THE POSTHUMOUS USE OF THE SPERM OR EGGS; OR**

**(2) THE DONOR OR THE INDIVIDUAL WHO INTENDS TO BECOME A PARENT THROUGH THE USE OF THE SPERM OR EGGS RECEIVES ANY REMUNERATION FOR THE DONATION OR USE OF THE SPERM OR EGGS.**

**~~(B) (C)~~ A DONOR'S CONSENT TO THE POSTHUMOUS USE OF THE DONOR'S SPERM OR EGGS GIVEN ON OR AFTER OCTOBER 1, 2012 IS NOT VALID UNLESS IT IS:**

**(1) IN WRITING; AND**

**(2) SIGNED BY THE DONOR OR BY SOME OTHER PERSON FOR THE DONOR, IN THE PRESENCE OF THE DONOR, AND AT THE EXPRESS DIRECTION OF THE DONOR; AND**

**~~(3) ACKNOWLEDGED BY THE DONOR BEFORE A NOTARY PUBLIC.~~**

**~~(C) (D)~~ A PERSON WHO ~~KNOWINGLY~~ VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:**

**(1) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$1,000; AND**

**(2) FOR A SECOND OR SUBSEQUENT OFFENSE, A FINE NOT EXCEEDING \$5,000.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

**Approved by the Governor, May 22, 2012.**