

# SENATE BILL 71

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2lr0822  
CF HB 101

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By: **Senator Kelley**

Introduced and read first time: January 16, 2012

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 1, 2012

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health – General – Posthumous Use of Donor Sperm and Eggs**

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

19 BY repealing and reenacting, with amendments,

20 Article – Estates and Trusts

21 Section 1–205 and 3–107

22 Annotated Code of Maryland

23 (2011 Replacement Volume and 2011 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to  
 2 Article – Health – General  
 3 Section 20–111  
 4 Annotated Code of Maryland  
 5 (2009 Replacement Volume and 2011 Supplement)

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

8 **Article – Estates and Trusts**

9 1–205.

10 **(A) A child includes:**

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

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

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

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

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

24 3–107.

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

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

30 **(1) THE DECEDENT HAD CONSENTED IN A WRITTEN RECORD TO**  
 31 **USE OF THE DECEDENT’S GENETIC MATERIAL FOR POSTHUMOUS CONCEPTION**

1 IN ACCORDANCE WITH THE REQUIREMENTS OF § 20-111 OF THE HEALTH –  
2 GENERAL ARTICLE;

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

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

9 Article – Health – General

10 20-111.

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

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

18 ~~(A)~~ (B) A PERSON MAY NOT USE SPERM OR EGGS FROM A KNOWN  
19 DONOR AFTER THE DONOR’S DEATH FOR THE PURPOSE OF ASSISTED  
20 REPRODUCTION, UNLESS THE DONOR PREVIOUSLY GAVE CONSENT FOR THE  
21 POSTHUMOUS USE OF SPERM OR EGGS.

22 ~~(B)~~ (C) A DONOR’S CONSENT TO THE POSTHUMOUS USE OF THE  
23 DONOR’S SPERM OR EGGS IS NOT VALID UNLESS IT IS:

24 (1) IN WRITING;

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

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

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.