S T A T E O F N E W Y O R K

3051

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

Introduced by M. of A. PERRY -- Multi-Sponsored by -- M. of A. BING, BOYLAND, COOK, GLICK, HOOPER, PEOPLES-STOKES, TOWNS, WRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to expanding the class of issue to include certain posthumously conceived children

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The estates, powers and trusts law is amended by adding a new section 4-1.3 to read as follows:

S 4-1.3 POSTHUMOUSLY CONCEIVED CHILDREN

(A) FOR THE PURPOSES OF THIS ARTICLE:

(1) A CHILD CONCEIVED POSTHUMOUSLY WITHIN TWO YEARS OF THE DATE OF DEATH OF HIS OR HER MATERNAL PROGENITOR SHALL BE CONSIDERED A NON-MARITAL CHILD AND THE LEGITIMATE CHILD OF SUCH MATERNAL PROGENITOR, WHO SHALL BE HIS OR HER MOTHER FOR THE PURPOSES OF INTESTATE SUCCESSION; AND SUCH CHILD MAY INHERIT FROM HIS OR HER MOTHER AND FROM HIS OR HER MATERNAL KINDRED, PROVIDED THE PROVISIONS OF PARAGRAPH (B) OF THIS SECTION ARE ESTABLISHED.

(2) A CHILD CONCEIVED POSTHUMOUSLY WITHIN TWO YEARS OF THE DATE OF DEATH OF HIS OR HER PATERNAL PROGENITOR SHALL BE CONSIDERED A NON-MARITAL CHILD AND THE LEGITIMATE CHILD OF SUCH PATERNAL PROGENITOR, WHOM SHALL BE HIS OR HER FATHER FOR THE PURPOSES OF INTESTATE SUCCESSION; AND SUCH CHILD MAY INHERIT FROM HIS OR HER FATHER AND FROM HIS OR HER PATERNAL KINDRED, PROVIDED THE PROVISIONS OF PARAGRAPH (B) OF THIS SECTION ARE ESTABLISHED.

(B) IN ORDER TO BE GRANTED THE RIGHTS OF A NON-MARITAL CHILD TO INTESTATE SUCCESSION, A COURT OF COMPETENT JURISDICTION MUST ESTABLISH THE FOLLOWING:

(1) THE DECEASED PROGENITOR SIGNED AN INSTRUMENT DURING HIS OR HER LIFETIME INDICATING HIS OR HER INTENT TO PARENT THE FUTURE CHILD, AND

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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INDICATING HIS OR HER INTENT TO PROVIDE SUPPORT FOR SUCH FUTURE CHILD, PROVIDED THAT SUCH INSTRUMENT IS ACKNOWLEDGED OR EXECUTED OR PROVED IN THE PRESENCE OF ONE OR MORE WITNESSES AND ACKNOWLEDGED BY SUCH WITNESS OR WITNESSES, IN EITHER CASE, BEFORE A NOTARY PUBLIC; AND

(2) PATERNITY OR MATERNITY, OF THE DECEASED PROGENITOR, IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.

(C) ANY AND ALL RIGHTS, PRIVILEGES AND BENEFITS GRANTED A NON-MARITAL CHILD, AS DEFINED IN SECTION 4-1.2 OF THIS PART, INCLUDING RIGHTS TO ANY SUPPORT PAYMENTS ADMINISTERED BY A STATE DEPARTMENT OR AGENCY, SHALL BE GRANTED TO A POSTHUMOUSLY CONCEIVED CHILD PROVIDED THE REQUIREMENTS OF THIS SECTION ARE MET.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.