STATE OF NEW YORK

6698

2019-2020 Regular Sessions

IN SENATE

September 11, 2019

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the estates, powers and trusts law, in relation to inheritance by children conceived after the death of a genetic parent

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph 1 of paragraph (a) of section 4-1.3 of the estates, powers and trusts law, as added by chapter 439 of the laws of 2014, is amended to read as follows:

(1) "Genetic parent" shall mean a [~~man~~] **person** who provides sperm or [~~a woman who provides~~] ova used to conceive a child after the death of the [~~man or woman~~] **person**.

§ 2. Paragraph (b) of section 4-1.3 of the estates, powers and trusts law, as added by chapter 439 of the laws of 2014, is amended to read as follows:

(b) For purposes of this article **and except as provided in paragraph (b-1) of this section**, a genetic child is the child of his or her genetic parent or parents and, notwithstanding paragraph (c) of section 4-1.1 of this part, is a distributee of his or her genetic parent or parents and, notwithstanding subparagraph (2) of paragraph (a) of section 2-1.3 of this chapter, is included in any disposition of property to persons described in any instrument of which a genetic parent of the genetic child was the creator as the issue, children, descendants, heirs, heirs at law, next of kin, distributee (or by any term of like import) of the creator if it is established that:

(1) the genetic parent in a written instrument executed pursuant to the provisions of this section not more than seven years before the death of the genetic parent:

(A) expressly consented to the use of his or her genetic material to posthumously conceive his or her genetic child, and

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

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(B) authorized a person to make decisions about the use of the genetic parent's genetic material after the death of the genetic parent;

(2) the person authorized in the written instrument to make decisions about the use of the genetic parent's genetic material gave written notice, by certified mail, return receipt requested, or by personal delivery, that the genetic parent's genetic material was available for the purpose of conceiving a genetic child of the genetic parent, and such written notice was given;

(A) within seven months from the date of the issuance of letters testamentary or of administration on the estate of the genetic parent, as the case may be, to the person to whom such letters have issued, or, if no letters have been issued within four months of the death of the genetic parent, and

(B) within seven months of the death of the genetic parent to a distributee of the genetic parent;

(3) the person authorized in the written instrument to make decisions about the use of the genetic parent's genetic material recorded the written instrument within seven months of the genetic parent's death in the office of the surrogate granting letters on the genetic parent's estate, or, if no such letters have been granted, in the office of the surrogate having jurisdiction to grant them; and

(4) the genetic child was in utero no later than twenty-four months after the genetic parent's death or born no later than thirty-three months after the genetic parent's death.

§ 3. Section 4-1.3 of the estates, powers and trusts law is amended by adding a new paragraph (b-1) to read as follows:

(b-1) Notwithstanding paragraph (b) of this section, for the purposes of this article, a genetic child is the child of his or her genetic parent or parents and, notwithstanding paragraph (c) of section 4-1.1 of this part, is a distributee of his or her genetic parent or parents and, notwithstanding subparagraph (2) of paragraph (a) of section 2-1.3 of this chapter, is included in any disposition of property to persons described in any instrument of which a genetic parent of the genetic child was the creator as the issue, children, descendants, heirs, heirs at law, next of kin, distributee (or by any term of like import) of the creator if, absent clear and convincing evidence of a contrary intention of the deceased genetic parent, it is established that:

(1) the person giving birth to the child is the surviving spouse of the genetic parent;

(2) the genetic material was collected after the genetic parent's death; and

(3) at the time of the genetic parent's death no divorce proceeding was pending.

Testimony with regard to such contrary intention of the deceased genetic parent shall not be disqualified under section forty-five hundred nineteen of the civil practice law and rules provided that such testimony is supported by other evidence.

§ 4. Paragraph (f) of section 4-1.3 of the estates, powers and trusts law, as added by chapter 439 of the laws of 2014, is amended to read as follows:

(f) Except as provided in [~~paragraph~~] **paragraphs** (b) **and (b-1)** of this section with regard to any disposition of property in any instrument of which the genetic parent of a genetic child is the creator, for purposes of section 2-1.3 of this chapter a genetic child who is entitled to inherit from a genetic parent under this section is a child of the genetic parent for purposes of a disposition of property to persons

described in any instrument as the issue, children, descendants, heirs, heirs at law, next of kin, distributees (or by any term of like import) of the creator or of another. This paragraph shall apply to the wills of persons dying on or after September first, two thousand fourteen, to lifetime instruments theretofore executed which on said date are subject to the grantor's power to revoke or amend, and to all lifetime instruments executed on or after such date.

§ 5. The opening paragraph of paragraph (a) of section 5-1.2 of the estates, powers and trusts law, as amended by chapter 515 of the laws of 1993, is amended to read as follows:

A husband or wife is a surviving spouse within the meaning, and for the purposes of 4-1.1, **4-1.3,** 5-1.1, 5-1.1-A, 5-1.3, 5-3.1 and 5-4.4, unless it is established satisfactorily to the court having jurisdiction of the action or proceeding that:

§ 6. This act shall take effect immediately and shall apply to estates of decedents dying on or after November 21, 2014; provided however, that the provisions of paragraph (f) of section 4-1.3 of the estates, powers and trusts law, as amended by section four of this act, shall apply to the wills of persons dying on or after September 1, 2014, to lifetime instruments theretofore executed which on said date are subject to the grantor's power to revoke or amend, and to all lifetime instruments executed on or after such date.