

# STATE OF NEW YORK

8598

2019-2020 Regular Sessions

## IN ASSEMBLY

September 13, 2019

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Judiciary

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:

1 Section 1. Subparagraph 1 of paragraph (a) of section 4-1.3 of the  
2 estates, powers and trusts law, as added by chapter 439 of the laws of  
3 2014, is amended to read as follows:

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

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

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

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

23 (A) expressly consented to the use of his or her genetic material to  
24 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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1 (B) authorized a person to make decisions about the use of the genetic  
2 parent's genetic material after the death of the genetic parent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 § 5. The opening paragraph of paragraph (a) of section 5-1.2 of the  
9 estates, powers and trusts law, as amended by chapter 515 of the laws of  
10 1993, is amended to read as follows:

11 A husband or wife is a surviving spouse within the meaning, and for  
12 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,  
13 unless it is established satisfactorily to the court having jurisdiction  
14 of the action or proceeding that:

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