STATE OF NEW YORK

8404

IN SENATE

May 22, 2020

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed 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:

Section 1. The opening paragraph of 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:

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:

§ 2. 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;

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

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(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.

§ 3. 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.

§ 4. 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:

§ 5. The opening paragraph of paragraph (b) of section 4-1.3 of the estates, powers and trusts law, as amended by section 28 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

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 intended parent or parents and, notwithstanding paragraph (c) of section 4-1.1 of this part, is a distributee of his or her intended 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 an intended parent of the genetic child was the creator as the issue, children, descendants, heirs, heirs at law, next of kin, distributees (or by any term of like import) of the creator if it is established that:

§ 6. The opening paragraph of paragraph (c) of section 4-1.3 of the estates, powers and trusts law, as amended by section 28 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

[~~If~~] **Except as provided in paragraph (b-1) of this section, if** the child was conceived using the genetic material of the intended parent, it must further be established that:

§ 7. Paragraph (b-1) of section 4-1.3 of the estates, powers and trusts law, as added by section two of this act, is amended to read as follows:

(b-1) Notwithstanding [~~paragraph~~] **paragraphs** (b) **and (c)** of this section, for the purposes of this article, a [~~genetic~~] child is the child of [~~his or her genetic parent or parents~~] **a decedent** and, notwith-

standing paragraph (c) of section 4-1.1 of this part, is a distributee of [~~his or her genetic parent or parents~~] **such decedent** 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~~] **such decedent** 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**, and the decedent shall be considered the intended parent of the child,** if, absent clear and convincing evidence of a contrary intention of the [~~deceased genetic parent~~] **decedent**, it is established that:

(1) the [~~person giving birth to the child~~] **other intended parent** is the surviving spouse of the genetic parent;

(2) the **child was conceived using the genetic material of the decedent and the** genetic material was collected after the [~~genetic parent's~~] **decedent's** death; and

(3) at the time of the [~~genetic parent's~~] **decedent's** death no divorce proceeding was pending.

Testimony with regard to such contrary intention of the [~~deceased genetic parent~~] **decedent** 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.

§ 8. Paragraph (g) of section 4-1.3 of the estates, powers and trusts law, as amended by section 28 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(g) 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 intended parent of a child is the creator, for purposes of section 2-1.3 of this chapter a child who is entitled to inherit from an intended parent under this section is a child of the intended 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.

§ 9. 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 three 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; and provided further that sections five, six, seven, and eight of this act shall take effect on the same date and in the same manner as part L of chapter 56 of the laws of 2020, takes effect.