

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1829

5 By: Representative Clowney
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For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING POSTHUMOUSLY
9 CONCEIVED CHILDREN AS IT RELATES TO INTESTATE
10 SUCCESSION; AND FOR OTHER PURPOSES.
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Subtitle

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13 TO AMEND THE LAW CONCERNING POSTHUMOUSLY
14 CONCEIVED CHILDREN AS IT RELATES TO
15 INTESTATE SUCCESSION.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 28-9-221 is amended to read as follows:
22 28-9-221. Child conceived after death of parent.

23 ~~(a) Notwithstanding the provisions of any law to the contrary, a child~~
24 ~~conceived after the death of a decedent who specifically authorized the~~
25 ~~decedent's surviving spouse, in a writing that is either notarized or~~
26 ~~witnessed by a licensed physician or a person acting under the supervision of~~
27 ~~a licensed physician, to use the decedent's gametes after the decedent's~~
28 ~~death shall be deemed the child of the decedent with the right to inherit~~
29 ~~from the decedent if the child is conceived within twelve (12) months~~
30 ~~following the death of the decedent and born within nineteen (19) months~~
31 ~~following the death of the decedent.~~

32 ~~(b) This section is retroactive to December 1, 2009, solely for the~~
33 ~~purpose of establishing a posthumous child's entitlement to Social Security~~
34 ~~benefits under the federal Social Security Act, 42 U.S.C. § 402(d), deriving~~
35 ~~from the decedent.~~
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1 (a) A child of a decedent who is conceived and born after the death of
2 the decedent shall be deemed the legitimate child of the decedent for the
3 purposes of intestate succession if:

4 (1) Either of the following apply:

5 (A) The decedent consented in a record to the use of his
6 or her genetic material to posthumously conceive a child by assisted
7 reproduction; or

8 (B) The intent of the decedent to conceive a child by
9 assisted reproduction after the death of the decedent is established by clear
10 and convincing evidence; and

11 (2) The embryo of the posthumously conceived child is in utero
12 no later than twenty-four (24) months after the death of the decedent.

13 (b)(1) Within six (6) months of the death of a decedent, a person
14 designated by the decedent to control the decedent's genetic material shall
15 provide written notice advising the personal representative with the
16 authority to control the distribution of the decedent's estate of the
17 availability of the decedent's genetic material for possible use.

18 (2) Failure to provide the notice required under subdivision
19 (b)(1) of this section in a timely manner shall absolve a personal
20 representative with the authority to control the distribution of the
21 decedent's estate from liability for distributing the decedent's estate as
22 otherwise authorized by law after the six-month period to provide the notice
23 lapses.

24 (3) If a personal representative with the authority to control
25 the distribution of the decedent's estate receives the notice required under
26 subdivision (b)(1) of this section after the six-month period to provide the
27 notice lapses, the fiduciary shall retain any remaining assets of the
28 decedent's estate to which a posthumous child of the decedent may have a
29 valid claim until two (2) years after the death of the decedent.

30 (c) Unless otherwise agreed by a decedent and his or her spouse, the
31 consent of the decedent to posthumous conception with his or her spouse shall
32 be automatically revoked upon the divorce of the decedent and his or her
33 spouse.

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