

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

HOUSE BILL 1904

5 By: Representative Sabin
6

For An Act To Be Entitled

8 AN ACT TO PERMIT A CHILD CONCEIVED THROUGH ASSISTED
9 REPRODUCTION AFTER THE DEATH OF A PARENT TO INHERIT
10 REAL OR PERSONAL PROPERTY OF THE PARENT THAT DIED
11 INTESTATE; AND FOR OTHER PURPOSES.
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Subtitle

14 TO PERMIT A CHILD CONCEIVED THROUGH
15 ASSISTED REPRODUCTION AFTER THE DEATH OF
16 A PARENT TO INHERIT REAL OR PERSONAL
17 PROPERTY OF THE PARENT THAT DIED
18 INTESTATE.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 28-9-202 is amended to read as follows:
25 28-9-202. Definitions.

26 (a) As used in this subchapter:

27 (1) "Assisted reproduction" means a method of causing pregnancy
28 other than sexual intercourse, including:

29 (A) Artificial insemination; and

30 (B) In-vitro fertilization and transfer of an embryo,
31 including to a surrogate;

32 (2) "Conceived" means the fertilization of an egg and its
33 subsequent implantation as an embryo in a uterus or the medical implantation
34 of an embryo in a uterus;

35 ~~(1)(A)~~(3)(A) "Descendants" means a person's children,
36 grandchildren, and all others, however remotely related to ~~such a~~ the person,



1 who are in a direct line of descent from ~~him or her~~ the person. In other
 2 words, the term “descendants” refers to lineal descendants and excludes an
 3 intestate’s ascendants or collateral relatives.

4 (B) The term “descendants”, wherever used in this
 5 subchapter, shall also include adopted children and their descendants of the
 6 intestate or of any other person in connection with whom the term
 7 “descendants” may be used.

8 (C) In determining which of an intestate’s descendants
 9 shall constitute an inheriting class, the descendants of a living descendant
 10 shall be excluded from the class; ~~and~~

11 ~~(2)(4)~~ “Dying intestate” means dying without a valid last will
 12 and testament. A person so dying is referred to in this subchapter as an
 13 “intestate”, and it is recognized that a person may die wholly or partially
 14 intestate-;

15 (5) "Genetic material" means an egg, sperm, or embryo; and

16 (6) "Posthumous child" or "posthumous descendant" means a child
 17 born after the death of the decedent, including a child conceived by assisted
 18 reproduction, before or after the death of the decedent, using the genetic
 19 material of the decedent with his or her consent.

20 (b) This section is retroactive to January 1, 2009.

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 22 SECTION 2. Arkansas Code § 28-9-209(c), concerning the legitimacy of a
 23 child for intestate succession, is amended to read as follows:

24 ~~(c)(1)(A) Any child conceived following artificial insemination of a~~
 25 ~~married woman with the consent of her husband shall be treated as their child~~
 26 ~~for all purposes of intestate succession. A child conceived during the life~~
 27 ~~of the decedent, including by assisted reproduction, with the consent of the~~
 28 ~~decedent, shall be treated as the child of the surviving spouse and the~~
 29 ~~decedent for all purposes of intestate succession when he child is conceived~~
 30 ~~by the surviving spouse using:~~

31 ~~(i) The genetic material of the decedent and the~~
 32 ~~surviving spouse; or~~

33 ~~(ii) The genetic material of the decedent and a~~
 34 ~~donor of genetic material.~~

35 (B) Consent of the ~~husband~~ decedent is presumed unless the
 36 contrary is shown by clear and convincing evidence.

1 (2) A posthumous child shall be treated as the child of the
 2 surviving spouse for all purposes of intestate succession when:

3 (A) The child is conceived by the surviving spouse using:

4 (i) The genetic material of the decedent; or

5 (ii) The decedent's and a donor's genetic material;

6 (B) An action is commenced or claim asserted against the
 7 estate of the decedent in a court of competent jurisdiction within two (2)
 8 years of the death of the decedent; and

9 (C) The posthumous child is permitted to inherit real or
 10 personal property under § 28-9-210.

11 (3) This section is retroactive to January 1, 2009.

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 13 SECTION 3. Arkansas Code § 28-9-210 is amended to read as follows:
 14 28-9-210. Posthumous heirs.

15 ~~(a) Posthumous descendants of the intestate conceived before his or~~
 16 ~~her death but born thereafter~~ A posthumous descendant shall inherit in the
 17 same manner as if born in the lifetime of the intestate, when:

18 (1) The decedent consents in writing that:

19 (A) The surviving spouse may use the genetic material of
 20 the decedent after the decedent's death; and

21 (B) The child shall be treated as the child of the
 22 decedent for all purposes of intestate succession; and

23 (2) The child is conceived within two (2) years of the
 24 decedent's death sustained by:

25 (A) Irreversible cessation of circulatory and respiratory
 26 functions; or

27 (B) Irreversible cessation of all functions of the entire
 28 brain, including the brain stem.

29 ~~(b) However, no~~ A right of inheritance shall not accrue to ~~any person~~
 30 ~~other than a lineal descendant of the intestate~~ a person who is an
 31 intestate's collateral descendant or an ascendant, unless such a person has
 32 been born at the time of the intestate's death.

33 (c) This section is retroactive to January 1, 2009.