

CHAPTER 18

POSTHUMOUSLY CONCEIVED AND BORN CHILDREN — STATUS — RIGHTS

H.F. 245

AN ACT relating to the status of posthumously conceived and born children in the context of legitimacy, inheritance, rights to claim an after-born child's share, and other rights.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 252A.3, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 4A. *a.* A child born of parents who at any time prior to the birth of the child entered into a civil or religious marriage ceremony is deemed the legitimate child of both parents, regardless of the validity of such marriage, if all of the following conditions are met:

- (1) The marriage was not thereafter dissolved prior to the death of either parent.
- (2) The child was conceived and born after the death of a parent or was born as the result of the implantation of an embryo after the death of a parent.
- (3) A genetic parent-child relationship between the child and the deceased parent is established.
- (4) The deceased parent, in a signed writing, authorized the other parent to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth, or the deceased parent, by a specific reference to the genetic material, bequeathed the genetic material to the other parent in a valid will.
- (5) The child is born within two years of the death of the deceased parent.

b. For the purposes of this subsection, "genetic material" means sperm, eggs, or embryos.

NEW SUBSECTION. 5A. *a.* A child born of parents who at any time prior to the birth of the child held themselves out as spouses by virtue of a common law marriage is deemed the legitimate child of both parents, if all of the following conditions are met:

- (1) The marriage was not thereafter dissolved prior to the death of either parent.
- (2) The child was conceived and born after the death of a parent or was born as the result of the implantation of an embryo after the death of a parent.
- (3) A genetic parent-child relationship between the child and the deceased parent is established.
- (4) The deceased parent, in a signed writing, authorized the other parent to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth, or the deceased parent, by a specific reference to the genetic material, bequeathed the genetic material to the other parent in a valid will.
- (5) The child is born within two years of the death of the deceased parent.

b. For purposes of this subsection, "genetic material" means sperm, eggs, or embryos.

Sec. 2. **NEW SECTION. 633.220A Posthumous child.**

1. For the purposes of rules relating to intestate succession, a child of an intestate conceived and born after the intestate's death or born as the result of the implantation of an embryo after the death of the intestate is deemed a child of the intestate as if the child had been born during the lifetime of the intestate and had survived the intestate, if all of the following conditions are met:

- a.* A genetic parent-child relationship between the child and the intestate is established.
- b.* The intestate, in a signed writing, authorized the intestate's surviving spouse to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth.
- c.* The child is born within two years of the death of the intestate.

2. Any heir of the intestate whose interest in the intestate's estate would be reduced by the birth of a child born as provided in subsection 1 shall have one year from the birth of the child within which to bring an action challenging the child's right to inherit under this chapter.

3. For the purposes of this section, "genetic material" means sperm, eggs, or embryos.

Sec. 3. Section 633.267, Code 2011, is amended to read as follows:

633.267 Children born or adopted after execution of will.

1. If a testator fails to provide in the testator's will for any child of the testator's children testator born to or adopted by the testator after the execution of the testator's last will, such child, whether born before or after the testator's death, shall receive a share in the estate of the testator equal in value to that which the child would have received under section 633.211, 633.212, or 633.219, after taking into account the spouse's intestate share under section 633.211 or section 633.212, whichever section or sections are applicable, if the testator had died intestate, unless it appears from the will that such omission was intentional.

2. a. For the purposes of this section, a child born after the testator's death includes a child of the testator conceived and born after the testator's death, or a child born as the result of the implantation of an embryo after the testator's death, if all of the following conditions are met:

(1) A genetic parent-child relationship between the child and the testator is established.

(2) The testator, in a signed writing, authorized the testator's surviving spouse to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth or the testator by specific reference to the genetic material, bequeathed the genetic material to the other parent in a valid will.

(3) The child is born within two years of the death of the testator.

b. Any child of the testator whose share of the estate would be reduced by the birth of a child born as provided in paragraph "a" shall have one year from the birth of the child within which to bring an action challenging the child's right to a share of the estate under this section.

c. For the purposes of this subsection, "genetic material" means sperm, eggs, or embryos.

Sec. 4. Section 633.477, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 13. A statement as to whether the decedent left any genetic material, and if the decedent left genetic material, if the personal representative has reserved sufficient estate assets to fund the distribution to which posthumous heirs, if any, would be entitled to receive; that the personal representative will wait until two years after the decedent's date of death to make final distributions; and that the personal representative will submit a supplemental report after such final distributions have been made.

Sec. 5. Section 633A.3106, Code 2011, is amended to read as follows:

633A.3106 Children born or adopted after execution of a revocable trust.

1. When a settlor fails to provide in a revocable trust for any of the settlor's children born to or adopted by the settlor after the execution of the trust or the last amendment to the trust, such child, whether born before or after the settlor's death, shall receive a share of the trust equal in value to that which the child would have received under section 633.211, 633.212, or 633.219, after taking into account the spouse's intestate share under section 633.211 or section 633.212, whichever is applicable, as if the settlor had died intestate, unless it appears from the terms of the trust or decedent's will that such omission was intentional.

2. For the purposes of this section, a child born after the death of the settlor who would have been entitled to a share of the settlor's probate estate pursuant to section 633.267 shall be treated as a child of the settlor for purposes of this section.

Approved March 31, 2011