

House Study Bill 639 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON SWAIM)

A BILL FOR

1 An Act relating to the status of posthumously conceived and
2 born children in the context of legitimacy, inheritance,
3 rights to claim an after-born child's share, and other
4 rights.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 252A.3, Code 2009, is amended by adding
2 the following new subsections:

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

8 (1) The marriage was not thereafter dissolved prior to the
9 death of either parent.

10 (2) The child was conceived and born after the death of
11 a parent or was born as the result of the implantation of an
12 embryo after the death of a parent.

13 (3) A genetic parent-child relationship between the child
14 and the deceased parent is established.

15 (4) The deceased parent, in a signed writing, authorized the
16 other parent to use the deceased parent's genetic material to
17 initiate the posthumous procedure that resulted in the child's
18 birth, or the deceased parent, by a specific reference to the
19 genetic material, bequeathed the genetic material to the other
20 parent in a valid will.

21 (5) The child is born within two years of the death of the
22 deceased parent.

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

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

30 (1) The marriage was not thereafter dissolved prior to the
31 death of either parent.

32 (2) The child was conceived and born after the death of
33 a parent or was born as the result of the implantation of an
34 embryo after the death of a parent.

35 (3) A genetic parent-child relationship between the child

1 and the deceased parent is established.

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

8 (5) The child is born within two years of the death of the
9 deceased parent.

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

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

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

20 a. A genetic parent-child relationship between the child and
21 the intestate is established.

22 b. The intestate, in a signed writing, authorized the
23 intestate's surviving spouse to use the deceased parent's
24 genetic material to initiate the posthumous procedure that
25 resulted in the child's birth.

26 c. The child is born within two years of the death of the
27 intestate.

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

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

35 Sec. 3. Section 633.267, Code 2009, is amended to read as

1 follows:

2 **633.267 Children born or adopted after execution of will.**

3 1. If a testator fails to provide in the testator's will
4 for any child of the testator's children testator born to or
5 adopted by the testator after the execution of the testator's
6 last will, such child, whether born before or after the
7 testator's death, shall receive a share in the estate of the
8 testator equal in value to that which the child would have
9 received under section 633.211, 633.212, or 633.219, after
10 taking into account the spouse's intestate share under section
11 633.211 or section 633.212, whichever section or sections are
12 applicable, if the testator had died intestate, unless it
13 appears from the will that such omission was intentional.

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

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

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

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

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

31 Sec. 4. Section 633.477, Code 2009, is amended by adding the
32 following new subsection:

33 NEW SUBSECTION. 13. A statement as to whether the
34 decedent left any genetic material, and if the decedent left
35 genetic material, if the personal representative has reserved

1 sufficient estate assets to fund the distribution to which
2 posthumous heirs, if any, would be entitled to receive; that
3 the personal representative will wait until two years after the
4 decedent's date of death to make final distributions; and that
5 the personal representative will submit a supplemental report
6 after such final distributions have been made.

7 Sec. 5. Section 633A.3106, Code 2009, is amended to read as
8 follows:

9 **633A.3106 Children born or adopted after execution of a**
10 **revocable trust.**

11 1. When a settlor fails to provide in a revocable trust
12 for any of the settlor's children born to or adopted by the
13 settlor after the execution of the trust or the last amendment
14 to the trust, such child, whether born before or after the
15 settlor's death, shall receive a share of the trust equal in
16 value to that which the child would have received under section
17 ~~633.211, 633.212, or 633.219~~, after taking into account the
18 spouse's intestate share under section 633.211 or section
19 633.212, whichever is applicable, as if the settlor had died
20 intestate, unless it appears from the terms of the trust or
21 decedent's will that such omission was intentional.

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

27 EXPLANATION

28 This bill relates to the status of posthumously conceived
29 and born children in the context of legitimacy, inheritance,
30 rights to claim an after-born child's share, and other rights.
31 The bill provides that if a child is born of parents who
32 entered into a civil or religious marriage ceremony or a common
33 law marriage at any time prior to the birth of the child,
34 the child is deemed the legitimate child of both parents,
35 regardless of the validity of such marriage, if the marriage

1 was not thereafter dissolved prior to the death of either
2 parent, if the child was conceived and born after the death
3 of a parent, and if these conditions are met: a genetic
4 parent-child relationship between the child and the deceased
5 parent is established; the deceased parent authorized the other
6 parent, in a written instrument or by specific bequest in a
7 valid will, to use the deceased parent's genetic material to
8 initiate the posthumous procedure that resulted in the child's
9 birth; and the child is born within two years of the death of
10 the deceased parent.

11 In the context of intestate succession, the bill provides
12 that a child of an intestate conceived and born after the
13 intestate's death is the intestate's child just as if the
14 child had been born in the lifetime of the intestate and had
15 survived the intestate if three conditions are met: a genetic
16 parent-child relationship between the child and the intestate
17 is established; the intestate authorized the surviving spouse,
18 in a signed writing, to use the deceased parent's genetic
19 material to initiate the posthumous procedure that resulted in
20 the child's birth; and the child is born within two years of
21 the death of the intestate. Additionally, the bill provides
22 that any heir of the intestate whose interest in the estate
23 of the intestate will be reduced by the birth of a child born
24 posthumously, shall have one year from the birth of the child
25 within which to bring an action to challenge the child's right
26 to a share of the estate.

27 In the context of testate succession, the bill provides that
28 a child born after the testator's death includes a child of
29 the testator born after the testator's death, if the following
30 conditions are all met: a genetic parent-child relationship
31 between the child and the testator is established; the testator
32 authorized the surviving spouse, in a signed writing, to use
33 the testator's genetic material to initiate the posthumous
34 procedure that resulted in the child's birth; and the child
35 is born within two years of the death of the testator. Such

1 after-born child would receive a share in the estate of the
2 testator equal in value to that which the child would have
3 received under the applicable Code sections relating to
4 intestate succession, unless it appears from the will that
5 omission from the will relative to the child was intentional.
6 In the context of a revocable trust, the bill provides that
7 a child born after death of the settlor who would have been
8 entitled to a share of the settlor's probate estate shall be
9 treated as a child of the settlor.