



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Aida S. Montano

Sub. S.B. 232

131st General Assembly
(As Passed by the General Assembly)

Sens. Bacon, Coley, Burke, Brown, Eklund, Faber, Hackett, Hite, Hughes, Jordan, Peterson, Schiavoni, Seitz, Tavares, Thomas

Reps. Dever, Gavarone, Green, Leland, Manning, Pelanda, Rezabek, Rogers, Sweeney

Effective date: March 14, 2017

ACT SUMMARY

- Terminates a transfer on death designation made to an owner's spouse on certain affidavits and deeds if the owner and the spouse later obtain a divorce, dissolution, or annulment.
- Precludes a descendant of an intestate from inheriting under the law on descent and distribution unless surviving the intestate for at least 120 hours, or unless born within 300 days after the intestate's death and living for at least 120 hours after birth.
- Prevents a person born more than 300 days after a testator's death from inheriting under the testator's will unless the will clearly provides otherwise, and specifies that if the will clearly provides for such posthumously born child to inherit, the child must be born within one year and 300 days after the testator's death.
- Prevents a settlor's child born by means of assisted reproductive technologies more than 300 days after the settlor's death from being considered the settlor's child unless the terms of the trust clearly provide otherwise.
- Provides that if the terms of a trust provide for a child born by means of assisted reproductive technologies and also provide for a time period in which the child must be born, that time period applies for the child to benefit from the trust, subject to a maximum period of five years from the settlor's death.
- Provides that if the terms of a trust provide for a child born by means of assisted reproductive technologies but do not provide for a time period in which the child

must be born, the child must be born within one year and 300 days from the settlor's death in order for the child to benefit from the trust.

CONTENT AND OPERATION

Transfer on death affidavit or deed – divorce, dissolution, or annulment

The act deals with the consequences of a divorce, dissolution, or annulment on a transfer on death designation on an affidavit or deed that designates a spouse as the real property owner's beneficiary. If an executed and recorded transfer on death designation affidavit or a transfer on death deed designates a real property owner's spouse as the transfer on death beneficiary, and the owner and the spouse are divorced, obtain a dissolution of marriage, or have the marriage annulled, the act terminates the designation and deems the spouse to have predeceased the owner.¹

The act provides that this provision is an exception to the general rule that changes made to the section in the act do not affect any deed executed and recorded before December 28, 2009. Therefore, the termination discussed above applies to deeds executed and recorded before that date, and after that date as well.²

Afterborn children or heirs

Descent and distribution – intestacy

The act provides that no descendant of an intestate inherits under the law on descent and distribution unless surviving the intestate for at least 120 hours, or unless born within 300 days after the intestate's death and living for at least 120 hours after birth. Under former law, all descendants of an intestate begotten before the intestate's death, but born after the intestate's death, inherited as if born in the intestate's lifetime and surviving the intestate, but in no other case could a person have inherited unless living at the time of the intestate's death.³

Probate law – wills

The act provides that, notwithstanding any provision in the Wills Law, any person born more than 300 days after the testator's death does not inherit under the testator's will unless the will clearly provides otherwise. If a will clearly provides that such a posthumously born child or heir inherits under the will, notwithstanding any

¹ R.C. 5302.23(B)(12) and (C).

² R.C. 5302.24.

³ R.C. 2105.14.



provision in the will to the contrary, that child or heir inherits only if born within one year and 300 days from the testator's death. This provision does not apply to the terms of a testamentary trust.⁴

Under the Wills Law, if, after making a will, a testator has a child born alive, adopts a child, or designates an heir, or if a child or designated heir who is reported to be dead proves to be alive, and no provision has been made in the will for the pretermitted child or heir, or for that child's or heir's issue, the will is not revoked. Unless it appears by the will that it was the testator's intention to disinherit that pretermitted child or heir, the devises and legacies granted by the will (except those to a surviving spouse) are abated proportionately, or in any other manner to give effect to the testator's intention shown in the will. Hence, the pretermitted child or heir will receive a share equal to that which the person would have been entitled to receive from the estate if the testator had died intestate with no surviving spouse, owning only that portion of the estate not devised to a surviving spouse. If the pretermitted child or heir dies prior to the death of the testator, the issue of the deceased child or heir receives the share the parent would have received if living. This provision in the law is subject to the act's provisions described in the preceding paragraph.⁵

Under the act, the share taken by a child born after the making of a will is considered as a testate succession. The right of a child born after the making of a will does not prejudice any right of a fiduciary to act under the will and does not affect the title of innocent purchasers for value of any property of the testator's estate. These provisions expand prior law which applied only to pretermitted children.⁶

Administrator's or executor's account

Continuing law requires every administrator and executor, within six months after appointment, to render a final and distributive account of the administration of the estate except under certain circumstances. The act adds to the exceptions to the final and distributive account requirement if the decedent's will provides that a posthumously born child or heir, which includes a child or heir born through the use of "assisted reproductive technologies," inherits under the will as described above in "**Probate law – wills.**" "Assisted reproductive technologies" means any medical or scientific technology or method designed to assist one or more persons to cause a

⁴ R.C.2107.34(C).

⁵ R.C. 2107.34(A).

⁶ R.C. 2107.34(D).



pregnancy through means other than by sexual intercourse, including technologies developed after the amendment.⁷

Trust Code

The act provides that no child of a settlor born through the use of any assisted reproductive technologies (as defined above) more than 300 days after the death of the settlor of a trust instrument (trust includes a revocable or irrevocable trust) is considered the settlor's child under that instrument, under the exercise of any power to appoint trust assets in favor of the settlor's children, or under the exercise of any other power to expand the class of beneficiaries under the trust instrument, unless the terms of the trust clearly provide otherwise. No other person born through the use of any assisted reproductive technologies more than 300 days after the date of the event that caused a class of beneficiaries to close under the terms of a trust is included in that class unless the terms of the trust clearly provide otherwise.⁸

If the terms of a trust provide for a child or other person born through the use of assisted reproductive technologies and also provide for a time period in which that child or person must be born in order to benefit under the trust, that time period applies for the child or person to benefit under the trust, subject to a maximum time period of five years from the applicable death of the settlor or date of the event that caused a class of beneficiaries to close. If the terms of a trust provide for a child or other person born through the use of assisted reproductive technologies and do not provide for a time period in which that child or person must be born to benefit under the trust, that child or person must be born within one year and 300 days from the applicable death of the settlor or date of the event that caused a class of beneficiaries to close in order for the child or person to benefit under the terms of the trust.⁹

The act provides that, notwithstanding any other Revised Code section, the above provisions govern the beneficial rights under a trust of any child born through the use of any assisted reproductive technologies, and also applies to the exercise of any power of appointment granted under a trust instrument or any other power to expand the class of beneficiaries under a trust instrument.¹⁰

⁷ R.C. 2109.301(B)(1)(f) and by reference to R.C. 5801.12(A).

⁸ R.C. 5801.12(A) and (C).

⁹ R.C. 5801.12(D).

¹⁰ R.C. 5801.12(B).



HISTORY

ACTION	DATE
Introduced	10-27-15
Reported, S. Gov't Oversight & Reform	04-07-16
Passed Senate (33-0)	04-12-16
Reported, H. Judiciary	05-25-16
Passed House (94-1)	11-29-16
Senate concurred in House amendments (31-0)	11-30-16

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