SPONSOR: Sen. Mantzavinos & Rep. Bush
Sen. Walsh

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 123
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 12 AND TITLE 13 OF THE DELAWARE CODE RELATING TO THE INHERITANCE RIGHTS OF ISSUE AND POSTHUMOUS CHILDREN

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 301, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 301. Shares of after-born children.

~~A child born after its parent has made~~If a testator becomes a parent of child after making a last will and testament ~~and for~~ in which ~~such parent made~~ no provision, vested or contingent, was made for such child, specifically or as member of a class, by will or otherwise, then such child or any descendant of such child if such child predeceased its parent, shall take the same portion of its parent's estate, both real and personal, that the child or descendant would have been entitled to if such parent had died intestate. This section shall not apply and no intestacy shall be created as to any child or children born after the date of the execution of a will in any case where the testator has provided in the last will and testament that the birth of any child or children subsequently shall not affect the will.

Section 2. Amend § 503, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 503. Share of heirs other than surviving spouse.

(a) The part of the intestate estate not passing to the surviving spouse under § 502 of this title, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) To the issue of the decedent, per stirpes;

(2) If there is no surviving issue, to the decedent's parent or parents equally;

(3) If there is no surviving issue or parent, to the ~~brothers and sisters and the issue of each deceased brother or sister,~~ issue of the decedent's parents, per stirpes;

(4) If there is no surviving issue, parent or issue of a parent, then to the next of kin of the decedent, and to the issue of a deceased next of kin, per ~~stirpes;~~ stirpes.

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~~(5)~~(b) Any property passing under this section to 2 or more persons passes to such persons as tenants in common.

(c) An individual who is related to a decedent through more than one line of relationship is entitled to only a single share based on one line of relationship. If the shares from the lines of relationship are unequal, the individual is entitled to the largest share. The individual and the individual's descendants are deemed to have predeceased the decedent with respect to the other line or lines of relationship.

Section 3. Amend § 508, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 508. Meaning of "child" and related ~~terms.~~ terms for purposes of intestate succession.

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) "Child" means an individual of any age whose parentage is established under Chapter 8 of Title 13.

(2) "Parent" means an individual who has established a parent-child relationship under Chapter 8 of Title 13.

(3) Notwithstanding the foregoing:

~~(1)~~a. An adopted person is the child of an adopting parent and not of the natural parent except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

~~(2)~~b. In cases not covered by paragraph ~~(1)~~ (3)a. of this section, a person born out of wedlock is a child of the mother. That person is also a child of the father, if legitimated pursuant to Chapter 13 of Title 13 or, notwithstanding any contrary provision of Chapter 13 of Title 13, if:

~~a.~~1. The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

~~b.~~2. The paternity is established by an adjudication before the death of the father or is established thereafter by preponderance of the evidence; except, that the paternity established under this paragraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

Section 4. Amend § 3301, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3301. Application of chapter; definitions.

(i) For purposes of construing a governing instrument, unless a contrary statement appears in such governing instrument:

(1) The terms "child" and "parent" shall be as defined in § 101 of this title.

~~(1)~~(2) The term "fiduciary fund" means the trust, estate, guardianship account, or account established under a Uniform Transfers to Minors Act [Chapter 45 of this title] that is being administered by a fiduciary.

~~(2)~~(3) The term "interested person" means any living person who:

a. Is an income beneficiary or remainder beneficiary of a trust;

b. Has a vested interest in a decedent's estate;

c. Receives benefits as a ward from a guardianship account; or

d. Is the minor with respect to an account established under a Uniform Transfers to Minors Act [Chapter 45 of this title].

~~(3)~~(4) The term "issue" shall be as defined in § 101 of this title, and shall denote a distribution per stirpes, such that the children of the person whose issue is referred to shall be taken to be the heads of the respective stocks of issue and a person legally adopted, whether under or over the age of 18 years at adoption, shall thereafter be considered to be a child and issue of the adopting person and an issue of the ascendants of the adopting person, and the issue of the person so adopted shall be considered to be issue of the adopting person and the adopting person's ascendants.

~~(4)~~(5) The term "published fee schedule" and other terms of similar import mean the schedule or formula described in § 3561(b)(1) of this title in the case of any trustee required to file such a schedule or formula under that section.

~~(5)~~(6) The term "wilful misconduct" means intentional wrongdoing, not mere negligence, gross negligence, or recklessness and "wrongdoing" means malicious conduct or conduct designed to defraud or seek an unconscionable advantage.

Section 5. Amend § 1302, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1302. Inheritance from illegitimate person dying intestate.

~~When an illegitimate person dies intestate and without lawful issue, such person's property, real and personal, if there is any, shall pass, and belong to such person's mother, if living, and, in case of the mother's death, to the mother's heirs, subject always to the payment of debts and demands against such illegitimate person and to expenses of administration.~~[Repealed.]

Section 6. Amend § 1303, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1303. Inheritance from mother of illegitimate person.

~~When the mother of an illegitimate child dies intestate, such illegitimate child, or the issue of such who may be dead, shall share in the said mother's real and personal estate, in the same manner as legitimate children or their issue.~~[Repealed.]

Section 7. Amend § 1304, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1304. Inheritance from father of illegitimate person.

~~Any person legitimated as provided by § 1301 of this title shall inherit from the father under the inheritance laws of this State to the same extent as a child conceived in wedlock of that father.~~[Repealed.]