



# *ENACTMENT NEWS*

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## **Senate Bill 232** **Death Designation Deeds; Posthumously Born Children** Effective March 2017

On December 13, 2016, the Governor signed Senate Bill 232, which changes the law on posthumously born children and transfer on death designation deeds, and adopts new law regarding trust beneficiary rights for children born via assisted reproductive technology. The bill will be effective in March 2017.

### **Posthumously Born Children Changes**

The bill provides that no descendant can inherit from an intestate unless that person survives the intestate by at least 120 hours, or is born within 300 days after the intestate's death and lives for at least 120 hours after birth (RC 2105.14). Any person born more than 300 days after the death of a testator shall not inherit from the will unless the will clearly provides otherwise. Under this section, any posthumously born child must be born within one year and 300 days to inherit. This requirement does not apply to testamentary trusts. The bill also clarifies that children born after the making of a will shall take testamentary shares (RC 2107.34).

The bill adds posthumously born children, including those born through assisted reproductive technology, as an exception to the requirement that an administrator and executor render a final account of their administration of an estate within six months after appointment (RC 2109.301).

### **Transfer on Death Designation Changes**

The bill modifies the designating transfer on death beneficiary statute to clarify that when a spouse is designated the transfer on death beneficiary for real property, but there has been a subsequent divorce, dissolution, or annulment, the spouse shall be deemed to have predeceased the owner of the real property. This is applicable to both transfer on death affidavits and deeds (RC 5302.23). The bill provides that the above changes regarding divorced, dissolved or annulled marriages are an exception to the general rule that RC 5302.23 is prospective, thus applying these specific changes retroactively (RC 5302.24).

### **Children Born Via Assisted Reproductive Technology (ART)**

The bill adopts new provisions to govern the trust beneficiary rights of children born through assisted reproductive technology (ART). No child born via ART more than 300 days after the death of a trust settlor shall be considered the settlor's child unless the trust clearly provides

otherwise. No other person born via ART more than 300 days after the event that caused a class of trust beneficiaries to close shall be included in that class, unless the terms of the trust clearly provide otherwise. If the terms of a trust provide for children or other persons born via ART and provide for a time period longer than 300 days, that time period applies, up to a maximum period of five years after the settlor's death or other event. If the terms of the trust provide for children or persons born via ART, but do not provide a time period, the maximum period is one year and 300 days (RC 5801.12).