Act No. 206
Public Acts of 1993
Approved by the Governor
October 18, 1993
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STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993

Introduced by Reps. Walberg, DeMars, Dalman, McBryde, Kaza, Cropsey, Horton, Jaye, Nye, Johnson, Jamian and Hammerstrom

ENROLLED HOUSE BILL No. 4561

AN ACT to amend sections 111, 127, and 138 of Act No. 642 of the Public Acts of 1978, entitled as amended "An act to revise and consolidate the laws relative to the probate of decedents' estates, guardianships, conservatorships, protective proceedings, trusts, and powers of attorney; to prescribe penalties and liabilities; and to repeal certain acts and parts of acts," being sections 700.111, 700.127, and 700.138 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 111, 127, and 138 of Act No. 642 of the Public Acts of 1978, being sections 700.111, 700.127, and 700.138 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 111. (1) For all purposes of intestate succession, a child is the heir of each of his or her natural parents notwithstanding the relationship between the parents except as otherwise provided by section 110.

(2) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for all purposes of intestate succession. A child conceived following artificial insemination of a married woman with the consent of her husband shall be considered as their child for all purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage is void, the child is considered to be their child for all purposes of intestate succession.

(3) Only the person presumed to be the natural parent of a child under subsection (2) may disprove any presumption that may be relevant to the relationship, and this exclusive right to do so terminates upon the death of the presumed parent.

(4) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the natural father of that child for all purposes of intestate succession if any of the following occurs:

(a) The man joins with the mother of the child and acknowledges that child as his child in a writing executed and acknowledged by them in the same manner provided by law for the execution and acknowledgment of deeds of real estate and recorded at any time during the child's lifetime in the office of the judge of probate in the county in which the man or mother of the child reside at the time of execution and acknowledgment. It shall not be necessary for the mother of the child to join in the acknowledgment if she is disqualified to act by reason of mental incapacity, death, or any other reason satisfactory to the probate judge of the county in which the acknowledgment may be recorded.

(b) The man joins with the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the birth of the child.

(c) The man and the child have borne a mutually acknowledged relationship of parent and child that began before the child became age 18 and continued until terminated by the death of either.

(d) The man has been determined to be the father of the child and an order of filiation establishing that paternity has been entered pursuant to the paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled Laws.

(5) Property of a child born out of wedlock or a child born or conceived during a marriage but not the issue of that marriage passes in accordance with the law of intestate succession except that the father and his kindred shall not be considered as relatives of the child unless the child might have inherited from the father as provided in this section.

(6) If a person is considered or presumed by a provision of this section, not including subsection (7), to be the natural parent of a child born out of wedlock or a child born or conceived during a marriage but not the issue of that marriage, that child shall bear the same relationship to that person as a child born or conceived during a marriage for all other purposes and shall have the identical status, rights, and duties of a child born in lawful wedlock effective from birth.

(7) The biological father of a child who is born out of wedlock, or who is born or conceived during a marriage but is not the issue of that marriage, shall be considered to be the natural father of that child for the purpose of intestate succession from the father to the child only. This subsection does not extinguish a child's right to inherit from another person considered to be the child's natural or legal father under another provision of law. This subsection does not apply to a child who is adopted before the date of death of the child's biological father.

Sec. 127. (1) If a child is born or adopted after the making of the child's parent's will and a provision for the child is not made in the will, that child shall have the same share in the estate of the testator as if the parent died intestate. The child's share shall be assigned to the child as provided by law in case of intestate estates, unless it is apparent from the will that it was the testator's intention not to make a provision for the child.

(2) If a testator fails to provide in the testator's will for any of his or her children; for the issue of a deceased child; or for a child who is born out of wedlock or who is born or conceived during a marriage but is not the issue of that marriage, which child was conceived as a result of sexual intercourse between the testator and the child's mother, and except as provided in subsection (3), it appears that the omission was not intentional but was made by mistake or accident, the child, or the issue of the child, shall have the same share in the estate of the testator as if the testator had died intestate. The share shall be assigned as provided in subsection (1).

(3) If a testator fails to provide in the testator's will for a child who is born out of wedlock or who is born or conceived during a marriage but is not the issue of that marriage, which child was conceived as a result of nonconsensual sexual intercourse between the testator and the child's mother, the child shall have the same share in the estate of the testator as if the testator had died intestate. The share shall be assigned as provided in subsection (1).

(4) If a share of the estate of a testator is assigned to a child born after the making of a will, or to a child or the issue of a child omitted in the will, pursuant to subsection (1), (2), or (3), the share shall first be taken from the estate not disposed of by the will, if any. If the portion of the estate passing intestate, if any, is not sufficient, so much as is necessary shall be taken from all the devisees in proportion to the value of the estate that they would have otherwise received respectively under the will, unless the obvious intention of the testator, in relation to some specific devise or other provision in the will, would thereby be defeated, in which event, the specific devise or provision may be exempted from the apportionment, and a different apportionment may be adopted in the discretion of the court.

Sec. 138. Half bloods, adopted persons, persons born out of wedlock, and persons born or conceived during a marriage but not the issue of that marriage are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, except that a person born out of wedlock or born or conceived during a marriage but not the issue of that marriage shall not be treated as the child of the father unless section 111(4), (5), or (7) applies.

Section 2. The amendments made by section 1 of this amendatory act to sections 111, 127, and 138 of the revised probate code, Act No. 642 of the Public Acts of 1978, being sections 700.111, 700.127, and 700.138 of the Michigan Compiled Laws, do not apply to an estate that is closed before the effective date of this amendatory act.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.