

AMENDED IN ASSEMBLY MARCH 10, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 204**

**Introduced by Assembly Member Harman**

January 31, 2005

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~~An act to amend Section 10172.5 of the Insurance Code, relating to life insurance.~~ *An act to amend Sections 249.5 and 294.7 of the Probate Code, relating to decedents' estates.*

LEGISLATIVE COUNSEL'S DIGEST

AB 204, as amended, Harman. ~~Life insurance; interest; posthumous conception~~ *Decedents' estates: posthumously conceived children.*

*(1) Existing law provides for the distribution of a decedent's estate among heirs and beneficiaries. Existing law provides that, for purposes of determining rights to property to be distributed upon the death of a decedent, a child of the decedent conceived after the decedent's death, other than a child conceived as a result of human cloning, is deemed to have been born in the decedent's lifetime if the child or his or her representative proves by clear and convincing evidence that specified conditions are satisfied. Those conditions include the requirement that the child or the child's representative has given written notice by certified mail that the decedent's genetic material was available for the purpose of posthumous conception.*

*This bill would instead require that the decedent's spouse or registered domestic partner or some other designated person, as specified, has given that written notice.*

*(2) Existing law bars a decedent's child, conceived after the decedent's death, or the child's representative from making a claim against the person making or receiving the distribution of the*

*decedent's property when the claim is based on wrongful distribution and written notice has not been given in a timely manner, as specified.*

*This bill would specify that that provision applies to a decedent's child, conceived after the death of the decedent, who is subject to the provision of law that requires that notice be given.*

~~Existing law requires each insurer admitted to transact life insurance, credit life insurance, or accidental death insurance in this state that fails or refuses to pay the proceeds of any policy of life insurance issued by it within 30 days after the date of death of the insured to pay interest, at a specified rate, on any moneys payable and unpaid after the expiration of the 30-day period requirement except as specified.~~

~~This bill would provide that this requirement shall not apply if the insurer has received a specified notice regarding the availability of the insured's genetic material for posthumous conception.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 10172.5 of the Insurance Code is~~  
2 ~~amended to read:~~

3 *SECTION. 1. Section 249.5 of the Probate Code is amended*  
4 *to read:*

5 249.5. For purposes of determining rights to property to be  
6 distributed upon the death of a decedent, a child of the decedent  
7 conceived after the death of the decedent shall be deemed to have  
8 been born in the lifetime of the decedent, and after the execution  
9 of all of the decedent's testamentary instruments, if the child or  
10 his or her representative proves by clear and convincing evidence  
11 that all of the following conditions are satisfied:

12 (a) The decedent, in writing, specifies that his or her genetic  
13 material shall be used for the posthumous conception of a child  
14 of the decedent, subject to the following:

15 (1) The specification shall be signed by the decedent and at  
16 least one competent witness.

17 (2) The specification may be revoked or amended only by a  
18 writing, signed by the decedent and at least one competent  
19 witness.

1 (3) The person designated by the decedent to use the genetic  
2 material shall be either of the following:

3 (A) The spouse or registered domestic partner of the decedent,  
4 as of the decedent's date of death.

5 (B) Some other person named in the specification as approved  
6 by the decedent to be the person designated by the decedent to  
7 use the genetic material for posthumous conception.

8 ~~(b) The child or the child's representative~~ *person named in*  
9 *subparagraph (A) or (B) of paragraph (3) of subdivision (a)* has  
10 given written notice by certified mail, return receipt requested,  
11 that the decedent's genetic material was available for the purpose  
12 of posthumous conception. The notice shall have been given to a  
13 person who has the power to control the distribution of either the  
14 decedent's property or death benefits payable by reason of the  
15 decedent's death, within four months of the date of issuance of a  
16 certificate of the decedent's death or entry of a judgment  
17 determining the fact of the decedent's death, whichever event  
18 occurs first.

19 (c) The child was in utero using the decedent's genetic  
20 material and was in utero within two years of the date of issuance  
21 of a certificate of the decedent's death or entry of a judgment  
22 determining the fact of the decedent's death, whichever event  
23 occurs first. This subdivision does not apply to a child who  
24 shares all of his or her nuclear genes with the person donating the  
25 implanted nucleus as a result of the application of somatic  
26 nuclear transfer technology commonly known as human cloning.

27 *SEC. 2. Section 249.7 of the Probate Code is amended to*  
28 *read:*

29 249.7. If the written notice required pursuant to Section 249.5  
30 is not given in a timely manner to any person who has the power  
31 to control the distribution of either the decedent's property or  
32 death benefits payable by reason of the decedent's death, that  
33 person may make the distribution in the manner provided by law  
34 as if any child of the decedent conceived after the death of the  
35 decedent had predeceased the decedent without heirs. Any child  
36 of a decedent conceived after the death of the decedent *who is*  
37 *subject to Section 249.5*, or that child's representative, shall be  
38 barred from making a claim against either the person making the  
39 distribution or the recipient of the distribution when the claim is  
40 based on wrongful distribution and written notice has not been

1 given in a timely manner pursuant to Section 249.5 to the person  
2 making that distribution.

3 ~~10172.5. (a) Notwithstanding any other provision of law,  
4 each insurer admitted to transact life insurance, credit life  
5 insurance, or accidental death insurance in this state that fails or  
6 refuses to pay the proceeds of, or payments under, any policy of  
7 life insurance issued by it within 30 days after the date of death  
8 of the insured shall pay interest, at a rate not less than the then  
9 current rate of interest on death proceeds left on deposit with the  
10 insurer computed from the date of the insured's death, on any  
11 moneys payable and unpaid after the expiration of the 30-day  
12 period. This section shall apply only to deaths of insureds which  
13 occur on or after January 1, 1976.~~

14 ~~(b) Nothing in this section shall be construed to allow any  
15 insurer admitted to transact life insurance, credit life insurance,  
16 or accidental death insurance in this state to withhold payment of  
17 money payable under a life insurance policy to any beneficiary  
18 for a period longer than reasonably necessary to transmit that  
19 payment. Whenever possible payment shall be made within 30  
20 days after the date of death of the insured.~~

21 ~~(c) In any case in which interest on the proceeds of, or  
22 payments under, any policy of life insurance, credit life  
23 insurance, or accidental death insurance becomes payable  
24 pursuant to subdivision (a), the insurer shall notify the named  
25 beneficiary or beneficiaries at their last known address that  
26 interest will be paid on the proceeds of, or payments under, that  
27 policy from the date of death of the named insured. That notice  
28 shall specify the rate of interest to be paid.~~

29 ~~(d) This section shall not require the payment of interest in any  
30 case in which the beneficiary elects in writing delivered to the  
31 insurer to receive the proceeds of, or payments under, the policy  
32 by any means other than a lump-sum payment thereof.~~

33 ~~(e) This section shall not require the payment of interest in any  
34 case in which the insurer has been provided with the notice  
35 specified in subdivision (b) of Section 249.5 of the Probate Code.~~

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