

Assembly Bill No. 204

CHAPTER 285

An act to amend Sections 249.5, 249.6, and 249.8 of the Probate Code, relating to decedents' estates.

[Approved by Governor September 22, 2005. Filed with
Secretary of State September 22, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 204, Harman. 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 decedent specify in writing that his or her genetic material shall be used for posthumous conception of a child of the decedent, and that the specification may be revoked or amended only by a signed writing.

This bill would require that specification, and any revocation or amendment thereof, to be dated. The bill would additionally delete a requirement that the specification, and revocation or amendment thereof, be signed by at least one competent witness.

(2) Existing law, for purposes of determining rights to property to be distributed upon a decedent's death, requires the person designated by the decedent to use his or her genetic material to be either the spouse or registered domestic partner of the decedent or some other person designated by the decedent, as specified. This provision also requires a posthumously conceived child or his or her representative to give written notice by certified mail that the decedent's genetic material was available for posthumous conception.

This bill would revise that provision to delete the reference to the spouse or registered domestic partner and would require the person designated by the decedent to control the use of the genetic material to give that written notice.

(3) Existing law provides that a person with the power to control the distribution of the decedent's property or death benefits does not incur liability for making a distribution or payment if that distribution or payment occurred prior to receiving notice or actual knowledge of the existence of genetic material.

This bill would also provide that each person to whom payment, delivery, or transfer of the decedent's property is made shall be personally liable to any person who has a superior right to the payment, delivery, or transfer of the decedent's property. The bill would specify the limitations on that liability and would provide that an action to impose liability shall be barred 3 years after distribution to the holder of the decedent's property or 3 years after discovery of fraud, whichever is later.

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

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

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

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

(1) The specification shall be signed by the decedent and dated.

(2) The specification may be revoked or amended only by a writing, signed by the decedent and dated.

(3) A person is designated by the decedent to control the use of the genetic material.

(b) The person designated by the decedent to control the use of the genetic material has given written notice by certified mail, return receipt requested, that the decedent's genetic material was available for the purpose of posthumous conception. The notice shall have been given to a person who has the power to control the distribution of either the decedent's property or death benefits payable by reason of the decedent's death, within four months of the date of issuance of a certificate of the decedent's death or entry of a judgment determining the fact of the decedent's death, whichever event occurs first.

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

SEC. 2. Section 249.6 of the Probate Code is amended to read:

249.6. (a) Upon timely receipt of the notice required by Section 249.5 or actual knowledge by a person who has the power to control the distribution of either the decedent's property or death benefits payable by

reason of the decedent's death, that person may not make a distribution of property or pay death benefits payable by reason of the decedent's death before two years following the date of issuance of a certificate of the decedent's death or entry of a judgment determining the fact of decedent's death, whichever event occurs first.

(b) Subdivision (a) does not apply to, and the distribution of property or the payment of benefits may proceed in a timely manner as provided by law with respect to, any property if the birth of a child or children of the decedent conceived after the death of the decedent will not have an effect on any of the following:

- (1) The proposed distribution of the decedent's property.
- (2) The payment of death benefits payable by reason of the decedent's death.
- (3) The determination of rights to property to be distributed upon the death of the decedent.
- (4) The right of any person to claim a probate homestead or probate family allowance.

(c) Subdivision (a) does not apply to, and the distribution of property or the payment of benefits may proceed in a timely manner as provided by law with respect to, any property if the person named in subdivision (a) of Section 249.5 sends written notice by certified mail, return receipt requested, that the person does not intend to use the genetic material for the posthumous conception of a child of a decedent. This notice shall be signed by the person named in paragraph (3) of subdivision (a) of Section 249.5 and at least one competent witness, and dated.

(d) A person who has the power to control the distribution of either the decedent's property or death benefits payable by reason of the decedent's death, shall incur no liability for making a distribution of property or paying death benefits if that person made a distribution of property or paid death benefits prior to receiving notice or acquiring actual knowledge of the existence of genetic material available for posthumous conception purposes or the written notice required by subdivision (b) of Section 249.5.

(e) Each person to whom payment, delivery, or transfer of the decedent's property is made is personally liable to a person who, pursuant to Section 249.5, has a superior right to the payment, delivery, or transfer of the decedent's property. The aggregate of the personal liability of a person shall not exceed the fair market value, valued as of the time of the transfer, of the property paid, delivered, or transferred to the person under this section, less the amount of any liens and encumbrances on that property at that time.

(f) In addition to any other liability a person may have pursuant to this section, any person who fraudulently secures the payment, delivery, or transfer of the decedent's property pursuant to this section shall be liable to the person having a superior right for three times the fair market value of the property.

(g) An action to impose liability under this section shall be barred three years after the distribution to the holder of the decedent's property, or

three years after the discovery of fraud, whichever is later. The three-year period specified in this subdivision may not be tolled for any reason.

SEC. 3. Section 249.8 of the Probate Code is amended to read:

249.8. Notwithstanding Section 249.6, any interested person may file a petition in the manner prescribed in Section 248 or 17200 requesting a distribution of property of the decedent or death benefits payable by reason of decedent's death that are subject to the delayed distribution provisions of Section 249.6. The court may order distribution of all, or a portion of, the property or death benefits, if at the hearing it appears that distribution can be made without any loss to any interested person, including any loss, either actual or contingent, to a decedent's child who is conceived after the death of the decedent. The order for distribution shall be stayed until any bond required by the court is filed.