

**SUBSTITUTE FOR
HOUSE BILL NO. 5207**

A bill to establish and allow for the use of assisted reproduction, including surrogacy; to provide for a child conceived, gestated, and born through the use of assisted reproduction, including through surrogacy; to provide for the powers and duties of certain state officers and entities; to provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
2
3
4
5
6

PART 1

GENERAL PROVISIONS

Sec. 101. This act may be cited as the "assisted reproduction and surrogacy parentage act".

Sec. 102. This act does not apply to the birth of a child conceived by sexual intercourse. Part 2 applies to the birth of a

1 child by assisted reproduction not involving surrogacy. Part 3
2 applies to the birth of a child by assisted reproduction under a
3 surrogacy agreement.

4 Sec. 103. As used in this act:

5 (a) "Assisted reproduction" means a method of causing
6 pregnancy through means other than by sexual intercourse including,
7 but not limited to, all of the following:

8 (i) Intrauterine, intracervical, or vaginal insemination.

9 (ii) Donation of gametes.

10 (iii) Donation of embryos.

11 (iv) In vitro fertilization and embryo transfer.

12 (v) Intracytoplasmic sperm injection.

13 (vi) Assisted reproductive technology.

14 (b) "Child" means an individual born as a result of assisted
15 reproduction or under a surrogacy agreement, whose parentage may be
16 determined under this act.

17 (c) "Donor" means an individual who provides gametes intended
18 for use in assisted reproduction, whether or not for compensation.
19 Donor does not include an individual who gives birth to a child
20 conceived by assisted reproduction, except in the case of
21 surrogacy, or an individual who is a parent under the rules
22 governing the parentage of children conceived by assisted
23 reproduction or assisted reproduction under a surrogacy agreement
24 under parts 2 and 3.

25 (d) "Genetic surrogate" means an individual, not an intended
26 parent, who agrees to become pregnant through assisted reproduction
27 using the individual's own gametes.

28 (e) "Gestational surrogate" means an individual, not an
29 intended parent, who agrees to become pregnant through assisted

1 reproduction using gametes that are not the individual's own.

2 (f) "Intended parent" means an individual, married or
3 unmarried, who manifests an intent to be legally bound as a parent
4 of a child conceived by assisted reproduction or by assisted
5 reproduction under a surrogacy agreement.

6 (g) "Medical evaluation" means a complete consultation with
7 and evaluation by a physician.

8 (h) "Mental health consultation" means a consultation with
9 and, when required by this act, an assessment by a mental health
10 professional.

11 (i) "Mental health professional" means that term as defined in
12 section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

13 (j) "Physician" means an individual licensed under part 170 or
14 175 of the public health code, 1978 PA 368, MCL 333.17001 to
15 333.17097 and 333.17501 to 333.17556, to engage in the practice of
16 medicine or osteopathic medicine and surgery.

17 (k) "Surrogacy agreement" means an agreement between 1 or more
18 intended parents and a surrogate in which the surrogate agrees to
19 become pregnant by assisted reproduction and that provides that
20 each intended parent is a parent of a child conceived under the
21 agreement. Unless otherwise specified, the term refers to both a
22 gestational surrogacy agreement and a genetic surrogacy agreement.

23 (l) "Surrogate" means an individual who is not an intended
24 parent and who agrees to become pregnant through assisted
25 reproduction under a surrogacy agreement. Surrogate includes a
26 genetic surrogate or gestational surrogate, as applicable.

27 Sec. 104. A parent-child relationship is established between
28 an individual and a child if 1 of the following occurs:

29 (a) The individual gives birth to the child, except as

1 provided in part 3.

2 (b) The individual's parentage of a child is established under
3 part 2.

4 (c) The individual's parentage of a child is established under
5 part 3.

6 Sec. 105. Unless parental rights are terminated, a parent-
7 child relationship established under this act applies for all
8 purposes. An individual who establishes a parent-child relationship
9 under this act is considered a natural parent for all purposes,
10 including under the child custody act of 1970, 1970 PA 91, MCL
11 722.21 to 722.31.

12 Sec. 106. A donor is not a parent of a child conceived by
13 assisted reproduction.

14 Sec. 107. Venue for a proceeding to adjudicate parentage under
15 this act is in the county of this state in which 1 of the following
16 occurs:

17 (a) The child resides, is born, or will be born.

18 (b) A parent or intended parent resides.

19 (c) A proceeding has been commenced for administration of the
20 estate of an individual who is or may be a parent under this act.

21 Sec. 108. Genetic testing may not be used for either of the
22 following purposes:

23 (a) To challenge the parentage of an individual who is a
24 parent under part 2 or 3.

25 (b) To establish the parentage of an individual who is a donor
26 under this act.

27 Sec. 109. On request of a party, the court may order the court
28 records in an action under this act to be sealed to the general
29 public. If the records are ordered sealed, all pleadings, papers,

1 or documents in the court records, including the case history or
2 registry of actions, must not be available for inspection, unless
3 the court, for good cause shown, orders the inspection or unless
4 requested by the child or a party.

5 PART 2

6 PARENTAGE OF CHILD OF ASSISTED REPRODUCTION NOT INVOLVING SURROGACY

7 Sec. 201. An individual who consents under section 202 to
8 assisted reproduction with the intent to be a parent of a child
9 conceived by the assisted reproduction is a parent of the child.

10 Sec. 202. (1) The consent described in section 201 must be
11 either of the following:

12 (a) In a record signed before, on, or after the birth of the
13 child by the individual who gave birth to the child and by an
14 individual who intends to be a parent of the child. An
15 acknowledgment of parentage under the acknowledgment of parentage
16 act, 1996 PA 305, MCL 722.1001 to 722.1013, is a record within the
17 meaning of this subdivision.

18 (b) In an agreement entered into before conception that the
19 individual who gave birth to the child and the individual who
20 intends to be a parent of the child intended they both would be
21 parents of the child.

22 (2) Failure to consent as required by subsection (1) does not
23 preclude a court from finding consent to parent if the individual
24 for the first 2 years of the child's life, including any period of
25 temporary absence, resided in the same household with the child and
26 openly held out the child as the individual's child.

27 Sec. 203. (1) An individual who is an intended parent or the
28 individual who gave birth to the child may bring a proceeding to
29 adjudicate parentage for a judgment of parentage in the family

1 division of the circuit court. If the court determines the
2 individual is a parent under this act, either because the
3 individual gave birth to the child or the individual is a
4 consenting intended parent under section 202, the court shall
5 adjudicate the individual to be a parent of the child.

6 (2) The individual who will give or who gave birth or an
7 individual who is or claims to be a parent under this section may
8 commence an action before or after the birth of a child to obtain a
9 judgment to declare that the intended parent or parents are the
10 parent or parents of the resulting child immediately on birth of
11 the child and order that parental rights and responsibilities vest
12 exclusively in the intended parent or parents immediately on birth
13 of the child. A certificate of live birth of a child must comply
14 with this act and must be established as provided under part 28 of
15 the public health code, 1978 PA 368, MCL 333.2801 to 333.2899.

16 (3) On request of a party and consistent with law of this
17 state other than this act, the court in an action under this act
18 may order the name of the child changed. If the final judgment is
19 at variance with the child's birth certificate, the court must
20 order the state registrar to issue an amended birth certificate.

21 (4) A judgment issued before the birth of the resulting child
22 does not take effect until the birth of the resulting child. This
23 subsection must not be construed to limit the court's authority to
24 issue other orders under other laws of this state.

25 (5) This state, the department, and the hospital where the
26 child is or is expected to be born are not necessary parties to an
27 action under this section.

28 (6) The burden of proof in an action under this section is by
29 a preponderance of the evidence.

1 surrogacy arrangement.

2 (e) Have independent legal representation of the individual's
3 choice by an attorney licensed in this state throughout the
4 agreement negotiation process, the execution of the agreement, and
5 the duration of the agreement about the terms of the surrogacy
6 agreement and the potential legal consequences of the surrogacy
7 agreement.

8 (2) To execute a surrogacy agreement, an intended parent,
9 whether or not genetically related to the child, must meet all of
10 the following requirements:

11 (a) Be 21 years of age or older.

12 (b) Have completed a mental health consultation.

13 (c) Have independent legal representation of the intended
14 parent's or parents' choice by an attorney licensed in this state
15 throughout the agreement negotiation process, the execution of the
16 agreement, and the duration of the agreement about the terms of the
17 surrogacy agreement and the potential legal consequences of the
18 surrogacy agreement.

19 Sec. 302. A surrogacy agreement must meet all of the following
20 requirements:

21 (a) One or more of the following must apply:

22 (i) At least 1 party must be a resident of this state.

23 (ii) The birth will occur or is anticipated to occur in this
24 state.

25 (iii) The assisted reproduction performed under the surrogacy
26 agreement will occur in this state.

27 (b) The surrogate and each intended parent must meet the
28 requirements of section 301.

29 (c) Each intended parent, the surrogate, and the surrogate's

1 spouse, if any, must be parties to the agreement.

2 (d) Each party listed in subdivision (c) must sign the
3 agreement.

4 (e) The signature of each party to the agreement must be
5 attested by a notarial officer.

6 (f) The intended parent or parents must pay for independent
7 legal representation for the surrogate.

8 (g) The agreement must be executed before a medical procedure
9 occurs related to the surrogacy agreement, other than the medical
10 evaluation and mental health consultations required by section 301.

11 Sec. 303. (1) A surrogacy agreement must comply with all of
12 the following requirements:

13 (a) The surrogate must agree to attempt to become pregnant by
14 means of assisted reproduction.

15 (b) Except as otherwise provided in sections 306, 308, and
16 309, the surrogate and the surrogate's spouse or former spouse, if
17 any, must have no claim to parentage of a child conceived by
18 assisted reproduction under the agreement.

19 (c) The surrogate's spouse, if any, must acknowledge and agree
20 to comply with the obligations imposed on the surrogate by the
21 agreement.

22 (d) Except as otherwise provided in sections 306, 308, and
23 309, the agreement must provide that the intended parent, or, if
24 there are 2 intended parents, each intended parent jointly and
25 severally, immediately on birth, will be the exclusive parent or
26 parents of the child, regardless of the number of children born or
27 gender or mental or physical condition of each child.

28 (e) Except as otherwise provided in sections 306, 308, and
29 309, the intended parent, or, if there are 2 intended parents, each

1 parent jointly and severally, immediately on birth, will assume
2 responsibility for the financial support of the child, regardless
3 of the number of children born or gender or mental or physical
4 condition of each child.

5 (f) The agreement must include information disclosing that the
6 intended parent or parents will cover the agreed-on expenses of the
7 surrogate, the assisted reproduction expenses, and the medical
8 expenses for the surrogate and the child.

9 (g) The agreement must permit the surrogate to make all health
10 and welfare decisions regarding the surrogate and the pregnancy,
11 including, but not limited to, whether to consent to a cesarean
12 section or multiple embryo transfer. Notwithstanding anything in
13 this act, any provision in the agreement to the contrary is void
14 and unenforceable. This act does not diminish the right of the
15 surrogate under section 28 of article I of the state constitution
16 of 1963.

17 (h) The surrogacy agreement must permit the surrogate to use
18 the services of a health care practitioner of the surrogate's
19 choosing.

20 (i) The surrogacy agreement must include information about
21 each party's right under section 305 to terminate the surrogacy
22 agreement.

23 (2) A surrogacy agreement may provide for 1 or both of the
24 following:

25 (a) Payment of compensation, support, and reasonable expenses.

26 (b) Reimbursement of specific agreed-on expenses if the
27 agreement is terminated under section 305.

28 (3) A right created under a surrogacy agreement is not
29 assignable, and there is no third-party beneficiary of the

1 surrogacy agreement other than the child.

2 (4) If any of the requirements of this part are not met, a
3 court of competent jurisdiction must determine parentage under
4 section 309(1) and (2).

5 Sec. 304. (1) Unless a surrogacy agreement expressly provides
6 otherwise, both of the following apply:

7 (a) The marriage of a surrogate after the surrogacy agreement
8 is signed by all parties does not affect the validity of the
9 agreement, the spouse's consent to the agreement is not required,
10 and the spouse is not a presumed parent of a child conceived by
11 assisted reproduction under the agreement.

12 (b) The dissolution, annulment, or declaration of invalidity
13 of the surrogate's marriage, the legal separation of the surrogate,
14 or a judgment of separate maintenance concerning the surrogate
15 after the surrogacy agreement is signed by all parties does not
16 affect the validity of the agreement.

17 (2) Unless a surrogacy agreement expressly provides otherwise,
18 both of the following apply:

19 (a) The marriage of an intended parent after the surrogacy
20 agreement is signed by all parties does not affect the validity of
21 a surrogacy agreement, the consent of the spouse is not required,
22 and the spouse is not, based on the agreement, a parent of a child
23 conceived by assisted reproduction under the agreement.

24 (b) The dissolution, annulment, or declaration of invalidity
25 of an intended parent's marriage, the legal separation of an
26 intended parent, or a judgment of separate maintenance concerning
27 an intended parent after the agreement is signed by all parties
28 does not affect the validity of the agreement and, except as
29 otherwise provided in sections 306, 308, and 309, the intended

1 parent is a parent of the child.

2 Sec. 305. (1) A party to a surrogacy agreement may terminate
3 the agreement at any time before a gamete or an embryo transfer by
4 giving notice of termination in a record to all other parties. If a
5 gamete or an embryo transfer does not result in a pregnancy, a
6 party may terminate the agreement at any time before a subsequent
7 gamete or embryo transfer.

8 (2) Unless a surrogacy agreement provides otherwise, on
9 termination of the agreement under subsection (1), the parties are
10 released from the agreement, except that each intended parent
11 remains responsible for expenses that are reimbursable under the
12 agreement and incurred by the surrogate through the date of
13 termination of the surrogacy agreement.

14 (3) Unless there is fraud, a party is not liable to any other
15 party for a penalty or liquidated damages for terminating a
16 surrogacy agreement under this section.

17 Sec. 306. (1) Except as otherwise provided in subsection (3)
18 and sections 307(2), 308, and 309, on birth of a child conceived by
19 assisted reproduction under a surrogacy agreement that complies
20 with this part, each intended parent is, by operation of law, a
21 parent of the child.

22 (2) Except as otherwise provided in subsection (3) and
23 sections 308 and 309, on birth of a child conceived by assisted
24 reproduction under a surrogacy agreement that complies with this
25 part, neither a surrogate nor the surrogate's spouse or former
26 spouse, if any, is a parent of the child.

27 (3) If a child is alleged to be a genetic child of the
28 individual who agreed to be a gestational surrogate, the court
29 shall order genetic testing of the child. If the child is a genetic

1 child of the individual who agreed to be a gestational surrogate,
2 parentage must be determined based on law of this state other than
3 this act.

4 (4) Except as otherwise provided in subsection (3) and
5 sections 307(2), 308, and 309, if, because of a clinical or
6 laboratory error, a child conceived by assisted reproduction under
7 a surrogacy agreement is not genetically related to an intended
8 parent or a donor who donated to the intended parent or parents,
9 each intended parent, and not the surrogate and the surrogate's
10 spouse or former spouse, if any, is a parent of the child, subject
11 to any other claim of parentage.

12 (5) A donor is not a parent of a child conceived by assisted
13 reproduction under a surrogacy agreement.

14 Sec. 307. (1) Section 306 applies to an intended parent even
15 if the intended parent died during the period between the transfer
16 of a gamete or embryo and the birth of the child.

17 (2) Except as otherwise provided in sections 308 and 309, an
18 intended parent is not a parent of a child conceived by assisted
19 reproduction under a surrogacy agreement if the intended parent
20 dies before the transfer of a gamete or embryo unless both of the
21 following apply:

22 (a) The surrogacy agreement provides otherwise.

23 (b) The transfer of a gamete or embryo occurs not later than
24 36 months after the death of the intended parent or the birth of
25 the child occurs not later than 45 months after the death of the
26 intended parent.

27 Sec. 308. (1) Before, on, or after the birth of a child
28 conceived by assisted reproduction under a surrogacy agreement that
29 complies with this part, a party to the agreement may commence an

1 action in the family division of the circuit court for entry of a
2 parentage judgment. The requested parentage judgment may be issued
3 before or after the child's birth as requested by the parties. The
4 surrogate and all intended parents are necessary parties to the
5 action. The complaint must be accompanied by a certification from
6 the attorney representing the intended parent or parents and from
7 the attorney representing the surrogate that the surrogacy
8 agreement complies with the requirements of this part and a
9 statement from all parties to the surrogacy agreement that they
10 knowingly and voluntarily entered into the surrogacy agreement and
11 that all parties are requesting the judgment of parentage. On
12 receipt of the complaint and accompanying certifications, the court
13 must, without holding a hearing unless the surrogate challenges the
14 accuracy of the attorney certificates, enter a judgment of
15 parentage that does all of the following, without additional
16 proceedings or documentation:

17 (a) Declares that each intended parent is a parent of the
18 child and orders that parental rights and duties vest immediately
19 on the birth of the child exclusively in each intended parent.

20 (b) Declares that the surrogate and the surrogate's spouse or
21 former spouse, if any, are not the parents of the child.

22 (c) To protect the privacy of the child and the parties,
23 orders the court records sealed.

24 (d) If necessary, orders that the child be surrendered to the
25 intended parent or parents.

26 (e) Awards other relief the court determines necessary and
27 proper.

28 (2) The court may issue an order or judgment under subsection
29 (1) before or after the birth of the child. The court must stay

1 enforcement of the order or judgment until the birth of the child.

2 (3) Neither the state nor the department nor the hospital
3 where the child is or is expected to be born are necessary parties
4 to an action under subsection (1).

5 (4) A certificate of live birth of a child must comply with
6 this act and must be established as provided under part 28 of the
7 public health code, 1978 PA 368, MCL 333.2801 to 333.2899.

8 Sec. 309. (1) A surrogacy agreement that substantially
9 complies with sections 302 and 303 is enforceable.

10 (2) If a child was conceived by assisted reproduction under a
11 surrogacy agreement that does not substantially meet the material
12 requirements of this part, a court must determine parentage
13 consistent with the intent of the parties, taking into account the
14 best interests of the child. Each party to the surrogacy agreement
15 and any individual who at the time of the execution of the
16 agreement was a spouse of a party to the agreement has standing to
17 maintain an action to adjudicate an issue related to the
18 enforcement of the agreement.

19 (3) Except as expressly provided in a surrogacy agreement or
20 in subsection (4), if the agreement is breached by the surrogate or
21 1 or more intended parents, the nonbreaching party is entitled to
22 the remedies available at law or in equity.

23 (4) The breach of the surrogacy agreement by 1 or more
24 intended parents does not relieve the intended parent of the
25 support obligations imposed by the parent and child relationship
26 under this part.

27 (5) Specific performance is not a remedy available for breach
28 by a surrogate of a provision in the agreement that the surrogate
29 be impregnated, terminate a pregnancy, or submit to medical

1 procedures.

2 (6) Except as otherwise provided in subsection (5), if an
3 intended parent is determined to be a parent of the child, specific
4 performance is a remedy available for either of the following:

5 (a) Breach of the surrogacy agreement by a surrogate that
6 prevents an intended parent from exercising immediately on birth of
7 the child the full rights of parentage.

8 (b) Breach of the surrogacy agreement by an intended parent
9 that prevents the intended parent's acceptance, immediately on the
10 birth of the child, of the duties of parentage.

11 Enacting section 1. The surrogate parenting act, 1988 PA 199,
12 MCL 722.851 to 722.863, is repealed.

13 Enacting section 2. This act takes effect 90 days after the
14 date it is enacted into law.

15 Enacting section 3. This act does not take effect unless all
16 of the following bills of the 102nd Legislature are enacted into
17 law:

18 (a) House Bill No. 5208.

19 (b) House Bill No. 5209.

20 (c) House Bill No. 5210.

21 (d) House Bill No. 5211.

22 (e) House Bill No. 5212.

23 (f) House Bill No. 5213.

24 (g) House Bill No. 5214.

25 (h) House Bill No. 5215.