

# HOUSE BILL NO. 5207

October 24, 2023, Introduced by Reps. Steckloff, Morgan, Conlin and O'Neal and referred to the Committee on Judiciary.

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

PART 1

2

GENERAL PROVISIONS

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

3           Sec. 102. This act does not apply to the birth of a child  
4 conceived by sexual intercourse. Part 2 applies to the birth of a  
5 child by assisted reproduction not involving surrogacy. Part 3  
6 applies to the birth of a child by assisted reproduction under a  
7 surrogacy agreement.

8           Sec. 103. As used in this act:

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

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

13           (ii) Donation of gametes.

14           (iii) Donation of embryos.

15           (iv) In vitro fertilization and embryo transfer.

16           (v) Intracytoplasmic sperm injection.

17           (vi) Assisted reproductive technology.

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

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

29           (d) "Genetic surrogate" means an individual, not an intended

1 parent, who agrees to become pregnant through assisted reproduction  
2 using the individual's own gametes.

3 (e) "Gestational surrogate" means an individual, not an  
4 intended parent, who agrees to become pregnant through assisted  
5 reproduction using gametes that are not the individual's own.

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

10 (g) "Medical evaluation" means a complete consultation with  
11 and evaluation by a physician.

12 (h) "Mental health consultation" means a consultation with  
13 and, when required by this act, an assessment by a mental health  
14 professional.

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

17 (j) "Physician" means an individual licensed under part 170 or  
18 175 of the public health code, 1978 PA 368, MCL 333.17001 to  
19 333.17097 and 333.17501 to 333.17556, to engage in the practice of  
20 medicine or osteopathic medicine and surgery.

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

27 (l) "Surrogate" means an individual who is not an intended  
28 parent and who agrees to become pregnant through assisted  
29 reproduction under a surrogacy agreement. Surrogate includes a

1 genetic surrogate or gestational surrogate, as applicable.

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

4 (a) The individual gives birth to the child, except as  
5 provided in part 3.

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

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

10 Sec. 105. Unless parental rights are terminated, a parent-  
11 child relationship established under this act applies for all  
12 purposes.

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

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

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

19 (b) A parent or intended parent resides.

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

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

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

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

28 Sec. 109. On request of a party, the court may order the court  
29 records in an action under this act to be sealed to the general

1 public. If the records are ordered sealed, all pleadings, papers,  
2 or documents in the court records, including the case history or  
3 registry of actions, must not be available for inspection, unless  
4 the court, for good cause shown, orders the inspection or unless  
5 requested by the child or a party.

6 PART 2

7 PARENTAGE OF CHILD OF ASSISTED REPRODUCTION NOT INVOLVING SURROGACY

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

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

13 (a) In a record signed before, on, or after the birth of the  
14 child by the individual who gave birth to the child and by an  
15 individual who intends to be a parent of the child.

16 (b) Established through proof by clear and convincing evidence  
17 of the existence of an agreement entered into before conception  
18 that the individual who gave birth to the child and the individual  
19 who intends to be a parent of the child intended they both would be  
20 parents of the child.

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

1 If the court determines the individual is a parent under this act,  
2 the court shall adjudicate the individual to be a parent of the  
3 child.

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

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

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

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

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

28 Sec. 204. (1) If an individual who intends to be a parent of a  
29 child conceived by assisted reproduction dies during the period

1 between the transfer of a gamete or embryo and the birth of the  
2 child, the individual's death does not preclude the establishment  
3 of the individual's parentage of the child if the individual  
4 otherwise would be a parent of the child under this act.

5 (2) If an individual who consented in a record to assisted  
6 reproduction by an individual who agreed to give birth to a child  
7 dies before a transfer of gametes or embryos, the deceased  
8 individual is a parent of a child conceived by the assisted  
9 reproduction only if both of the following occurred:

10 (a) Either the individual consented in a record that if  
11 assisted reproduction were to occur after the death of the  
12 individual, the individual would be a parent of the child or the  
13 individual's intent to be a parent of a child conceived by assisted  
14 reproduction after the individual's death is established by clear  
15 and convincing evidence.

16 (b) Either the transfer occurs not later than 36 months after  
17 the individual's death or the child's birth occurs not later than  
18 45 months after the individual's death.

### 19 PART 3

#### 20 PARENTAGE OF CHILD BORN THROUGH SURROGACY

21 Sec. 301. (1) To execute an agreement to act as a surrogate,  
22 an individual must meet all of the following requirements:

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

24 (b) Have previously given birth to at least 1 child.

25 (c) Have completed a medical evaluation concerning the  
26 surrogacy arrangement.

27 (d) Have completed a mental health consultation concerning the  
28 surrogacy arrangement.

29 (e) Have independent legal representation of the individual's

1 choice by an attorney licensed in this state throughout the  
2 agreement negotiation process, the execution of the agreement, and  
3 the duration of the agreement about the terms of the surrogacy  
4 agreement and the potential legal consequences of the surrogacy  
5 agreement.

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

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

10 (b) Have completed a mental health consultation.

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

17 Sec. 302. A surrogacy agreement must meet all of the following  
18 requirements:

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

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

21 (ii) The birth will occur or is anticipated to occur in this  
22 state.

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

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

27 (c) Each intended parent, the surrogate, and the surrogate's  
28 spouse, if any, must be parties to the agreement.

29 (d) Each party listed in subdivision (c) must sign the



1 agreement.

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

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

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

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

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

13 (b) Except as otherwise provided in sections 306, 308, and  
14 309, the surrogate and the surrogate's spouse or former spouse, if  
15 any, must have no claim to parentage of a child conceived by  
16 assisted reproduction under the agreement.

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

20 (d) Except as otherwise provided in sections 306, 308, and  
21 309, the agreement must provide that the intended parent, or, if  
22 there are 2 intended parents, each intended parent jointly and  
23 severally, immediately on birth, will be the exclusive parent or  
24 parents of the child, regardless of the number of children born or  
25 gender or mental or physical condition of each child.

26 (e) Except as otherwise provided in sections 306, 308, and  
27 309, the intended parent, or, if there are 2 intended parents, each  
28 parent jointly and severally, immediately on birth, will assume  
29 responsibility for the financial support of the child, regardless

1 of the number of children born or gender or mental or physical  
2 condition of each child.

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

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

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

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

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

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

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

26 (3) A right created under a surrogacy agreement is not  
27 assignable, and there is no third-party beneficiary of the  
28 surrogacy agreement other than the child.

29 (4) If any of the requirements of this part are not met, a

1 court of competent jurisdiction must determine parentage under  
2 section 309(1) and (2).

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

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

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

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

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

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

29 Sec. 305. (1) A party to a surrogacy agreement may terminate

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

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

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

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

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

25 (3) If a child is alleged to be a genetic child of the  
26 individual who agreed to be a gestational surrogate, the court  
27 shall order genetic testing of the child. If the child is a genetic  
28 child of the individual who agreed to be a gestational surrogate,  
29 parentage must be determined based on law of this state other than

1 this act.

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

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

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

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

20 (a) The surrogacy agreement provides otherwise.

21 (b) The transfer of a gamete or embryo occurs not later than  
22 36 months after the death of the intended parent or the birth of  
23 the child occurs not later than 45 months after the death of the  
24 intended parent.

25 Sec. 308. (1) Before, on, or after the birth of a child  
26 conceived by assisted reproduction under a surrogacy agreement that  
27 complies with this part, a party to the agreement may commence an  
28 action in the family division of the circuit court for entry of a  
29 parentage judgment. The requested parentage judgment may be issued

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

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

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

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

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

24 (e) Awards other relief the court determines necessary and  
25 proper.

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

29 (3) Neither the state nor the department nor the hospital

1 where the child is or is expected to be born are necessary parties  
2 to an action under subsection (1).

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

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

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

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

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

25 (5) Specific performance is not a remedy available for breach  
26 of a surrogacy agreement.

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

29 Enacting section 2. This act takes effect 90 days after the

1 date it is enacted into law.

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

5 (a) Senate Bill No. \_\_\_\_ or House Bill No. 5208 (request no.  
6 03362'23 a).

7 (b) Senate Bill No. \_\_\_\_ or House Bill No. 5209 (request no.  
8 03362'23 b).

9 (c) Senate Bill No. \_\_\_\_ or House Bill No. 5212 (request no.  
10 03362'23 c).

11 (d) Senate Bill No. \_\_\_\_ or House Bill No. 5210 (request no.  
12 03362'23 d).

13 (e) Senate Bill No. \_\_\_\_ or House Bill No. 5211 (request no.  
14 03362'23 e).

15 (f) Senate Bill No. \_\_\_\_ or House Bill No. 5214 (request no.  
16 03362'23 f \*).

17 (g) Senate Bill No. \_\_\_\_ or House Bill No. 5215 (request no.  
18 03362'23 g).

19 (h) Senate Bill No. \_\_\_\_ or House Bill No. 5213 (request no.  
20 03362'23 h).