Legislative Analysis

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ASSISTED REPRODUCTION AND SURROGACY PARENTAGE ACT

House Bill 5207 (H-1) as passed by the House
Sponsor: Rep. Samantha Steckloff

House Bill 5208 as passed by the House
Sponsor: Rep. Christine Morse

House Bill 5209 as passed by the House
Sponsor: Rep. Kelly Breen

House Bill 5210 (H-1) as passed by the House
Sponsor: Rep. Jason Hoskins

House Bill 5211 as passed by the House
Sponsor: Rep. Jennifer A. Conlin

House Bill 5212 (H-1) as passed by the House
Sponsor: Rep. Jason Morgan

House Bill 5213 as passed by the House
Sponsor: Rep. Penelope Tsernoglou

House Bill 5214 (H-1) as passed by the House
Sponsor: Rep. Laurie Pohutsky

House Bill 5215 as passed by the House
Sponsor: Rep. Amos O'Neal

House Committee: Judiciary
Senate Committee: Civil Rights, Judiciary, and Public Safety
Complete to 5-23-24

(Enacted as Public Acts 24 to 32 of 2024)

SUMMARY:

House Bills 5207 to 5215 would repeal the Surrogate Parenting Act and create a new act, the Assisted Reproduction and Surrogacy Parentage Act. The new act would address issues related to the birth of a child by assisted reproduction, including under a surrogacy agreement, including legal presumptions concerning parentage, procedures and requirements for surrogacy agreements, legal venue and judicial responsibilities, and related issues. The other bills in the package would make coordinating changes in several other statutes.

Current law

As noted, the bills would repeal the Surrogate Parenting Act.[1] That act, which became law in 1988, declares surrogate parentage contracts void and unenforceable, and defines them as agreements under which "a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental or custodial rights to the child."

Entering into such a contract *for compensation* (if a *participating party*) is a misdemeanor punishable by imprisonment for up to one year or a fine of up to $10,000, or both, and arranging one *for compensation* (if not a *participating party*) is a felony punishable by imprisonment for up to five years, or a fine of up to $50,000, or both. The latter penalty also applies to entering into or arranging a contract (regardless of whether for compensation) in which an unemancipated minor or an individual diagnosed as being intellectually disabled or having a mental illness or developmental disability is the surrogate mother (genetically related to the

[1] http://legislature.mi.gov/doc.aspx?mcl-Act-199-of-1988

child) or surrogate carrier (not genetically related). For purposes of the above provisions, *compensation* does not include payment of expenses incurred as a result of the pregnancy or the surrogate's actual medical expenses, and *participating party* means a biological mother, biological father, surrogate carrier, or the spouse of any of those individuals.

Under the act, if a child is born to a surrogate mother or surrogate carrier under a surrogate parentage contract, and there is a dispute between the parties concerning custody of the child, the party with physical custody of the child can retain physical custody until the circuit court orders otherwise. The court must award legal custody of the child based on a determination of the child's best interests.

House Bill 5207 would create a new act, the Assisted Reproduction and Surrogacy Parentage Act, and repeal the Surrogate Parenting Act. Part 1 of the new act contains general provisions, Part 2 would apply to the birth of a child by ***assisted reproduction*** *not* involving surrogacy, and Part 3 would apply to the birth of a child by assisted reproduction under a ***surrogacy agreement***.

Assisted reproduction would mean a method of causing pregnancy by a means other than sexual intercourse, including all of the following:

- Intrauterine, intracervical, or vaginal insemination.
- Donation of gametes (i.e., egg cells or sperm).
- Donation of embryos.
- In vitro fertilization and embryo transfer.
- Intracytoplasmic sperm injection (in which a single healthy sperm is injected directly into a mature egg).
- Assisted reproductive technology.

Surrogacy agreement would mean an agreement between one or more ***intended parents*** and a ***surrogate*** in which the surrogate agrees to become pregnant by assisted reproduction and that provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a genetic surrogacy agreement and a gestational surrogacy agreement. (See the definitions of genetic surrogate and gestational surrogate below.)

Intended parent would mean an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction (Part 2) or by assisted reproduction under a surrogacy agreement (Part 3).

Surrogate would mean an individual who is not an intended parent and who agrees to become pregnant through assisted reproduction under a surrogacy agreement (Part 3). Surrogate would include a ***genetic surrogate*** or ***gestational surrogate***, as applicable.

Genetic surrogate would mean an individual who is not an intended parent and who agrees to become pregnant through assisted reproduction using their own gametes.

Gestational surrogate would mean an individual who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not their own.

Part 1 (General provisions)

The new act would not apply to the birth of a child conceived by sexual intercourse.

Parent-child relationship

Under the act, a parent-child relationship would be established between an individual and a child if one of the following occurs:

- The individual gives birth to the child (except as provided in Part 3).
- The individual's parentage of a child is established under Part 2.
- The individual's parentage of a child is established under Part 3.

A parent-child relationship established under the act would apply for all purposes, unless parental rights are terminated. An individual who establishes a parent-child relationship under the act would be considered a natural parent for all purposes, including under the Child Custody Act.

A ***donor*** would not be a parent of a child conceived by assisted reproduction.

> ***Donor*** would mean an individual who provides gametes intended for use in assisted reproduction, regardless of whether they are provided for compensation. Donor would not include an individual who gives birth to a child conceived by assisted reproduction, except in the case of surrogacy, or an individual who is a parent under the rules governing the parentage of children conceived by assisted reproduction or assisted reproduction under a surrogacy agreement under Parts 2 and 3.

Court proceedings

Venue for a proceeding to adjudicate parentage under the act would be in the county where the child resides, is born, or will be born; where a parent or intended parent resides; or where a proceeding has been commenced for administration of the estate of an individual who is or who may be a parent under the act.

Upon the request of a party, the court could order the court records in an action under the act sealed to the general public, in which case all pleadings, papers, or documents in those records, including the case history or registry of actions, would not be available for inspection, except if requested by the child or a party or if the court, for good cause shown, orders the inspection. The act would prohibit the use of genetic testing to challenge the parentage of a parent under Part 2 or Part 3 or to establish the parentage of a donor under the act.

Part 2 (Parentage of child by assisted reproduction not involving surrogacy)

Consent

The act would provide that an individual who consents to assisted reproduction with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child. This consent would have to be either of the following:

- In a record signed before, on, or after the birth of the child by the individual who gave birth to the child and by an individual who intends to be a parent of the child. An acknowledgment of parentage under the Acknowledgment of Parentage Act would be a record within the meaning of this provision.
- In an agreement entered into before conception that the individual who gave birth to the child and the individual who intends to be a parent of the child intended that they both would be parents of the child.

Failure to consent as described above would not preclude a court from finding consent to parent if, for the first two years of the child's life, including any period of temporary absence, the individual resided in the same household with the child and openly held the child out as theirs.

Adjudication

An intended parent or the individual who gave birth to the child could bring a proceeding to adjudicate parentage for a judgment of parentage in the family division of circuit court. If the court determines that the individual is a parent under the act, either because the individual gave birth to the child or because the individual is a consenting intended parent as described above, the court would have to adjudicate the individual to be a parent of the child.

The individual who gave or will give birth or an individual who is or claims to be a parent under these provisions could commence an action before or after the birth of a child to obtain a judgment to declare that the intended parent or parents are the parent or parents of the resulting child immediately upon birth of the child and order that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon birth of the child. A certificate of live birth of a child would have to comply with the new act and be established as provided under Part 28 (Vital Records) of the Public Health Code.[2]

Upon request of a party and consistent with other state law, the court in an action under the act could order the name of the child changed. If the final judgment varies from the child's birth certificate, the court would have to order the state registrar to issue an amended birth certificate.

A judgment issued before the birth of the child would not take effect until that birth. This provision would not limit the court's authority to issue other orders under other state law.

The state, the department (not specified), and the hospital where the child is born or is expected to be born would not be necessary parties to an action under these provisions.

The burden of proof in an action under these provisions would be by a preponderance of the evidence.

Event of death

If an individual who intends to be a parent of a child conceived by assisted reproduction dies after the transfer of a gamete or embryo and before the birth of the child, the individual's death would not preclude the establishment of the individual's parentage of the child if the individual otherwise would be a parent of the child under the act.

If an individual who consented in a record to assisted reproduction by an individual who agreed to give birth to a child dies before a transfer of gametes or embryos, the deceased individual would be a parent of a child conceived by the assisted reproduction only if both of the following apply:

- Either of the following:
  - The individual consented in a record that if assisted reproduction were to occur after the death of the individual, the individual would be a parent of the child.
  - The individual's intent to be a parent of a child conceived by assisted reproduction after the individual's death is established by clear and convincing evidence.

[2] See House Bill 5208, below. Section 28: http://legislature.mi.gov/doc.aspx?mcl-368-1978-2-28

- Either of the following:
  - The transfer occurs not later than 36 months after the individual's death.
  - The child's birth occurs not later than 45 months after the individual's death.

Part 3 (Parentage of child born through surrogacy)

Requirements for parties to the agreement

To execute an agreement to act as a surrogate, an individual would have to be at least 21 years old and have previously given birth to a child. Before entering into an agreement, the individual would have to have a complete consultation and evaluation by a physician, and a consultation with a mental health professional, concerning the surrogacy arrangement.

To execute a surrogacy agreement, an intended parent, whether or not genetically related to the child, would have to be at least 21 years old and have had a consultation with a mental health professional.

In addition, both the surrogate and the intended parent would have to have independent legal representation of their choice by an attorney licensed in Michigan throughout the agreement negotiation process, the execution of the agreement, and the duration of the agreement concerning the terms of the surrogacy agreement and the potential legal consequences of the surrogacy agreement. The intended parent or parents would have to pay for the surrogate's independent legal representation.

Requirements for agreements

One or more of the following would have to apply to a surrogacy agreement:

- A party is a Michigan resident.
- The birth will occur or is anticipated to occur in Michigan.
- The assisted reproduction performed under the surrogacy agreement will occur in Michigan.

Each intended parent, the surrogate, and the surrogate's spouse, if any, would have to be parties to the agreement, and sign it, with the signature of each attested by a notarial officer.

The surrogacy agreement would have to be executed before a medical procedure occurs related to the agreement (other than the medical and mental health consultations described above).

A surrogacy agreement would have to comply with all of the following:

- The surrogate must agree to attempt to become pregnant by means of assisted reproduction.
- The surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement.
- The agreement must include information disclosing that the intended parent or parents will cover the agreed-upon expenses of the surrogate, the assisted reproduction expenses, and the medical expenses for the surrogate and the child.
- The agreement must allow the surrogate to make all health and welfare decisions regarding the surrogate and the pregnancy, including whether to consent to a cesarean section or multiple embryo transfer. Any provision in an agreement to the contrary would be void and unenforceable. The act would not diminish the right of the surrogate

under section 28 of Article I of the state constitution (which guarantees the right to reproductive freedom).[3]

- The agreement must allow the surrogate to use the services of a health care practitioner of their choosing.
- The agreement must include information about each party's right to terminate the agreement.
- Except as described below, the surrogate and the surrogate's spouse or former spouse, if any, must have no claim to parentage of a child conceived by assisted reproduction under the agreement.
- Except as described below, the agreement must provide that the intended parent or parents, jointly and severally, immediately upon birth, will be the exclusive parent or parents of the child and will assume responsibility for their financial support, regardless of the number of children born or the gender or mental or physical condition of each.

A surrogacy agreement could provide for one or both of the following:

- Payment of compensation, support, and reasonable expenses.
- Reimbursement of specific agreed-upon expenses if the agreement is terminated.

A right created under a surrogacy agreement would not be assignable. Other than the child, there would be no third-party beneficiary of the surrogacy agreement.

If any of the requirements of Part 3 are not met, a court of competent jurisdiction would have to determine parentage as described below.

Presumptions concerning a marriage of the surrogate

Unless an agreement expressly provides otherwise, both of the following would apply:

- The marriage of a surrogate after the surrogacy agreement is signed by all parties would not affect the validity of the agreement, the spouse's consent to the agreement would not be required, and the spouse would not be a presumed parent of a child conceived by assisted reproduction under the agreement.
- The dissolution, annulment, or declaration of invalidity of the surrogate's marriage, the legal separation of the surrogate, or a judgment of separate maintenance concerning the surrogate after the surrogacy agreement is signed by all parties would not affect the validity of the agreement.

Presumptions concerning a marriage of an intended parent

Unless an agreement expressly provides otherwise, both of the following would apply:

- The marriage of an intended parent after the surrogacy agreement is signed by all parties would not affect the validity of a surrogacy agreement, the consent of the spouse would not be required, and the spouse would not, based on the agreement, be a parent of a child conceived by assisted reproduction under the agreement.
- The dissolution, annulment, or declaration of invalidity of an intended parent's marriage, the legal separation of an intended parent, or a judgment of separate maintenance concerning an intended parent after the agreement is signed by all parties would not affect the validity of the agreement and, except as described below, the intended parent would be a parent of the child.

[3] http://legislature.mi.gov/doc.aspx?mcl-Article-I-28

Termination of an agreement

A party to a surrogacy agreement could terminate it at any time before a gamete or embryo transfer by giving notice of termination in a record to all other parties.

If a gamete or embryo transfer does not result in a pregnancy, a party could terminate the agreement at any time before a subsequent gamete or embryo transfer.

Unless the surrogacy agreement provides otherwise, upon termination of the agreement as described above, the parties would be released from the agreement, except that each intended parent would remain responsible for expenses reimbursable under the agreement that were incurred by the surrogate through the date of the termination.

Unless there is fraud, a party would not be liable to any other party for a penalty or liquidated damages for terminating a surrogacy agreement under these provisions.

Parentage

Except as described below, upon the birth of a child conceived by assisted reproduction under a surrogacy agreement, each intended parent would be, by operation of law, a parent of the child, and neither a surrogate nor the surrogate's spouse or former spouse, if any, would be a parent of the child.

If a child is alleged to be a genetic child of the individual who agreed to be a gestational surrogate, the court would have to order genetic testing of the child. If the child is a genetic child of the individual who agreed to be a gestational surrogate, parentage would have to be determined based on Michigan law other than the new act.

Except as otherwise provided, if, because of a clinical or laboratory error, a child conceived by assisted reproduction under a surrogacy agreement is not genetically related to an intended parent or a donor who donated to the intended parent or parents, each intended parent, and not the surrogate or the surrogate's spouse or former spouse, if any, would be a parent of the child, subject to any other claim of parentage.

A donor would not be a parent of a child conceived by assisted reproduction under a surrogacy agreement.

Event of death

The above parentage provisions would apply to an intended parent even if the intended parent died during the period after the transfer of a gamete or embryo and before the birth of the child.

Except as described below, an intended parent would not be a parent of a child conceived by assisted reproduction under a surrogacy agreement if the intended parent died before the transfer of a gamete or embryo unless both of the following apply:

- The surrogacy agreement provides otherwise.
- Either of the following:
    - The transfer occurs not later than 36 months after the death.
    - The child's birth occurs not later than 45 months after the death.

Parentage judgments

Before or after the birth of a child conceived by assisted reproduction under a surrogacy agreement that complies with Part 3, a party to the agreement could commence an action in the family division of circuit court for entry of a parentage judgment. The requested parentage judgment could be issued before or after the birth as requested by the parties. The surrogate and all intended parents would be necessary parties to the action. The complaint would have to be accompanied by a certification from the attorney representing the intended parent or parents and from the attorney representing the surrogate that the surrogacy agreement complies with the requirements of Part 3 and a statement from all parties to the surrogacy agreement that they knowingly and voluntarily entered into the agreement and that all parties are requesting the judgment of parentage.

Upon receipt of the complaint and accompanying certifications, the court, without holding a hearing unless the surrogate challenges the accuracy of the attorney certificates, would have to enter a judgment of parentage that does all of the following, without additional proceedings or documentation:

- Declares that each intended parent is a parent of the child and orders that parental rights and duties vest immediately upon the birth of the child exclusively in each intended parent.
- Declares that the surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child.
- Orders the court records sealed to protect the privacy of the child and the parties.
- If necessary, orders that the child be surrendered to the intended parent or parents.
- Awards other relief the court determines necessary and proper.

The court could issue an order or judgment described above before or after the birth of the child. If before, it would have to stay enforcement of the order until the birth of the child.

The state, the department (not specified), and the hospital where the child is or is expected to be born would not be necessary parties to an action under these provisions.

A certificate of live birth of a child would have to comply with the act and be established as provided under Part 28 of the Public Health Code.

Enforceability and breach

A surrogacy agreement that substantially complies with the above requirements for agreements would be enforceable. If a child is conceived by assisted reproduction under a surrogacy agreement that does not substantially meet the material requirements of Part 3, a court would have to determine parentage consistent with the intent of the parties, taking into account the best interests of the child. Each party to the surrogacy agreement and any of their spouses at the time the agreement was executed would have standing to maintain an action to adjudicate an issue related to its enforcement.

Except as expressly provided in a surrogacy agreement, if the agreement is breached by the surrogate or one or more intended parents, the nonbreaching party would be entitled to the remedies available at law or in equity. However, the breach of the surrogacy agreement by one or more intended parents would not relieve the intended parent of the support obligations imposed by the parent-and-child relationship under Part 3.

Specific performance would not be a remedy available for breach by a surrogate of a provision in the agreement that the surrogate be impregnated, terminate a pregnancy, or submit to medical procedures. However, if an intended parent is determined to be a parent of the child, specific performance would be a remedy available for either of the following:

- Breach of the surrogacy agreement by a surrogate that prevents an intended parent from exercising the full rights of parentage immediately upon the birth of the child.
- Breach of the surrogacy agreement by an intended parent that prevents the intended parent's acceptance of the duties of parentage immediately upon the birth of the child.

Repeal

Finally, as described above, the bill would repeal the Surrogate Parenting Act.

MCL 722.851 to 722.863 (repealed)

House Bill 5208 would amend the Public Health Code to require the state registrar to establish a new birth certificate for an individual born in Michigan when the registrar receives a judgment or parentage judgment under the Assisted Reproduction and Surrogacy Parentage Act (House Bill 5207), together with the information necessary to identify the original birth certificate and establish a new one. The new certificate would be substituted for the original, and the evidence of assisted reproduction or surrogacy under the Assisted Reproduction and Surrogacy Parentage Act would not be subject to inspection except upon a court order.

If an individual for whom a new birth certificate is to be established does not have a birth certificate on file, a new live birth certificate could be prepared on the delayed birth certificate form in use at the time of the judgment or parentage judgment under the Assisted Reproduction and Surrogacy Parentage Act. The new certificate would be subject to a $50 fee.

In addition, the act includes provisions concerning a child conceived by a married woman using assisted reproductive technology. The bill would remove these provisions.

MCL 333.2822 et seq.

House Bill 5209 would remove sentencing guidelines from the Code of Criminal Procedure for felonies contained in the Surrogate Parenting Act, which House Bill 5207 would repeal.

MCL 777.15g

House Bill 5210 would amend the Estates and Protected Individuals Code to revise procedures governing intestate succession (inheritance without a will). The act provides that, for purposes of intestate succession, an individual is the child of the individual's natural parents, regardless of their marital status. It provides that the parent and child relationship may be established in any of several listed ways. The bill would add the following to that list:

- A child conceived by assisted reproduction with the consent of an individual consistent with the Assisted Reproduction and Surrogacy Parentage Act (House Bill 5207) is considered the child of the intended parent or parents for purposes of intestate succession.

- A child conceived by assisted reproduction under a surrogacy agreement that complies with the Assisted Reproduction and Surrogacy Parentage Act is considered the child of the intended parent or parents for purposes of intestate succession.

One of the ways to establish the parent-and-child relationship under the act is through a presumption that both spouses are the natural parents of a child born or conceived during a marriage. The act now provides that only the individual who is presumed to be the natural parent of a child under this provision can disprove that presumption, and that this exclusive right to disprove the presumption ends when they die. The bill would remove this provision and so extend to others the right to disprove the presumption that both spouses are the natural parents of a child born or conceived during a marriage for purposes of intestate succession. The practical effect of this change is unclear.

In addition, the act now provides that inheritance from or through a child by either natural parent **or that parent's relatives** ("kindred") is precluded if the natural parent has not openly treated the child as theirs or has refused to support the child. The bill would instead provide that, in cases where the natural parent has not openly treated the child as theirs or has refused to support them, inheritance from or through the child is precluded for that parent **or the child's relatives**.

Finally, the act now includes provisions concerning a child conceived by a married woman using assisted reproductive technology. The bill would remove these provisions.

MCL 700.2114

House Bill 5211 would amend the Paternity Act to provide that the parentage of either of the following must not be determined under the act:

- A child conceived through the use of assisted reproduction that does not involve surrogacy if the parents of the child can be determined under the Assisted Reproduction and Surrogacy Parentage Act (House Bill 5207).
- A child conceived under a surrogacy agreement that complies with the Assisted Reproduction and Surrogacy Parentage Act.

MCL 722.711 et seq.

House Bill 5212 would amend the Revocation of Paternity Act, which among other things provides procedures under which acknowledgments, determinations, and judgments related to parentage can be challenged and set aside in certain circumstances. The bill would prohibit bringing an action under the act concerning the parentage of either of the following:[4]

- A child conceived through the use of assisted reproduction that does not involve surrogacy if the parents of the child can be determined under the Assisted Reproduction and Surrogacy Parentage Act (House Bill 5207).
- A child conceived under a surrogacy agreement that complies with the Assisted Reproduction and Surrogacy Parentage Act.

[4] This would replace a current provision that says there is no basis under the act for vacating a judgment establishing paternity of a child conceived under a surrogate parentage contract as defined in the Surrogate Parenting Act.

Genetic testing

The bill would prohibit genetic testing from being used to do either of the following:

- Challenge the parentage of a parent under Part 2 or Part 3 of the Assisted Reproduction and Surrogacy Parentage Act.
- Establish the parentage of a donor (as defined in the Assisted Reproduction and Surrogacy Parentage Act).

Refusal to issue order

In addition, the act now allows a court to refuse to enter an order setting aside a parentage determination, revoking an acknowledgment of parentage, determining that a genetic father is not the child's father, or determining that a child is born out of wedlock if the court finds evidence that the order would not be in the best interests of the child. The court must state its reasons on the record for refusing to enter an order. The court now *may* consider the following factors (revised here to reflect the phrasing of the bill):

- Whether the presumed parent is estopped from denying parentage because of the individual's conduct.
- The length of time the presumed parent was on notice that they might not be the child's genetic father.
- The facts surrounding the presumed parent's discovery that they might not be the child's genetic father.
- The nature of the relationship between the child and the presumed parent or alleged father.
- The child's age.
- The harm that may result to the child.
- Other factors that may affect the equities arising from the disruption of the parent-child relationship.
- Any other factor the court determines appropriate to consider.

Under the bill, the court *could* consider the following factors:

- Whether the presumed parent is estopped from denying parentage because of the individual's conduct.
- The nature of the relationship between the child and the presumed parent or alleged father.
- The child's age.
- The harm that may result to the child.
- Other factors that may affect the equities arising from the disruption of the parent-child relationship.
- Any other factor the court determines appropriate to consider.

However, if the challenge to parentage is based on genetic testing, the bill would *require* the court to consider all of the following:

- Whether the presumed parent is estopped from denying parentage because of the individual's conduct.
- The length of time the presumed parent was on notice that they might not be the child's genetic father.
- The facts surrounding the presumed parent's discovery that they might not be the child's genetic father.

- The nature of the relationship between the child and the presumed parent or alleged father.
- The child's age.
- The harm that may result to the child.
- Other factors that may affect the equities arising from the disruption of the parent-child relationship.
- Any other factor the court determines appropriate to consider.

Other provisions

The bill would generally refer to parentage instead of paternity, and would change the defined terms *presumed father* and *acknowledged father* to *presumed parent* and *acknowledged parent*. (A presumed parent is presumed to be the child's parent by virtue of their marriage to the child's mother at the time of the child's conception or birth, and an acknowledged parent has affirmatively held themselves out to be the child's parent by executing an acknowledgment of parentage under the Acknowledgment of Parentage Act.)

MCL 722.1431 et seq.

House Bill 5213 would amend the Summary Support and Paternity Act to provide that the act cannot be used to determine parentage of either of the following:

- A child conceived through the use of assisted reproduction that does not involve surrogacy if the parents of the child can be determined under the Assisted Reproduction and Surrogacy Parentage Act (House Bill 5207).
- A child conceived under a surrogacy agreement that complies with the Assisted Reproduction and Surrogacy Parentage Act.

MCL 722.1465

House Bill 5214 would amend the Acknowledgment of Parentage Act, which provides a process that now allows a man to be considered the natural father of a child born out of wedlock by completing an acknowledgment of parentage form that he and the child's mother both sign.

The bill would additionally provide that, if a ***child*** born out of wedlock is conceived by assisted reproduction as defined in the Assisted Reproduction and Surrogacy Parentage Act (House Bill 5207), an individual is considered to be the natural parent of that child if the individual joins with the individual who gave birth to the child and acknowledges that child as their child by completing an acknowledgment of parentage form. In addition, if a child is born to a married individual who gave birth to a child conceived by assisted reproduction as defined in the Assisted Reproduction and Surrogacy Parentage Act, their spouse would be considered to be an acknowledged parent by completing an acknowledgment of parentage form.

Child, under the bill, would mean any of the following:

- A child conceived and born to a woman who was not married at the time of conception or the child's date of birth (current law).
- A child the circuit court determines was born or conceived during a marriage but is not the issue of that marriage (current law).
- A child born to an individual who gave birth to a child conceived through assisted reproduction (added by the bill).

Completed form

The act now provides that a signed acknowledgment of parentage establishes paternity and can be the basis for court-ordered child support, custody, or parenting time without further adjudication under the Paternity Act.

The bill would require that an acknowledgment of parentage be filed with the state registrar. Under the bill, both of the following would apply to an acknowledgment that complies with the act and is filed with the state registrar:

- The acknowledgment establishes parentage, is the equivalent to an adjudication of parentage of the child, and confers on the ***acknowledged parent*** all rights and duties of a parent.
- The acknowledgment can be the basis for court-ordered child support, custody, or parenting time without further adjudication under the Paternity Act or under the Assisted Reproduction and Surrogacy Parentage Act.

  Acknowledged parent would mean an individual who has established a parent-child relationship under the act.

Initial custody

The act now provides that, after a mother and father sign an acknowledgment of parentage, the mother has initial custody of the minor child, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or otherwise agreed upon by the parties in writing and acknowledged by the court.

The bill would amend this provision to provide that, after completion of an acknowledgment of parentage signed in accordance with the act is filed with the state registrar, the mother has initial custody of the minor child, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or otherwise agreed upon by the parties in writing and acknowledged by the court.

MCL 722.1002 et seq.

House Bill 5215 would amend the Genetic Parentage Act to provide that the act cannot be used to determine parentage if the child is either of the following:

- A child conceived through the use of assisted reproduction that does not involve surrogacy if the parents of the child can be determined under the Assisted Reproduction and Surrogacy Parentage Act.
- A child conceived under a surrogacy agreement that complies with the Assisted Reproduction and Surrogacy Parentage Act.

MCL 722.1465

FISCAL IMPACT:

House Bill 5207 would have an indeterminate, but likely minimal, fiscal impact on state expenditures to the Department of Health and Human Services (DHHS) and local units of government. The fiscal impact on local units of government is dependent on the amount in fines that counties collected from individuals who enter surrogacy agreements as prohibited by 1988 PA 199. The fines imposed by 1988 PA 199 for entering a surrogacy agreement range from $10,000 to $50,000. House Bill 5207 repeals this act and does not impose any penalties

for parents choosing to enter, or not enter, a surrogacy agreement. This may result in a loss in revenue to counties, though the exact amount is indeterminate, but likely minimal.

The bill allows Michigan residents to enter surrogacy agreements which would no longer necessitate the use of the adoption process to adopt to gain custody of a child born to a surrogate. This may create a savings for DHHS as there could be instances where DHHS would not need to pay daily maintenance payments, child placing agency reimbursements and incentives, as well as administrative costs typically associated with the adoption process. The actual amount of potential savings is indeterminate because the number of children born to surrogates that go through the adoption process is unknown at this time.

The bill also would result in a decrease in costs for the state and for local units of government depending on the number of convictions that occurred for surrogate parenting contracts involving minors or intellectually disabled and surrogate parenting contracts for compensation. A decrease in the number of felony convictions resulting in incarceration would reduce costs related to the state correctional system. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly $48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about $5,400 per supervised offender in the same year. There would also be a decrease in penal fine revenues which would decrease funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5208 would have a negligible fiscal impact on state expenditures to DHHS and local units of government. The fiscal impact would be dependent on the number of applications for a new birth certificate that are received using a judgement or parentage judgement under the Assisted Reproduction and Surrogacy Parentage Act as acceptable documentation. Currently, the application fee for a new birth certificate is $50.

House Bill 5209 is a companion bill to House Bill 5207 and would amend the sentencing guidelines chapter of the Code of Criminal Procedure to eliminate reference to the felonies of surrogate parenting contracts involving minors or intellectually disabled and surrogate parenting contracts for compensation as Class E felonies punishable by a statutory maximum of 5 years. The bill would not have a direct fiscal impact on the state or on local units of government.

House Bills 5210 and 5214 would have no fiscal impact on the state or on local units of government.

House Bills 5211, 5213, and 5215 would have an indeterminate, but likely minimal, fiscal impact on fiscal impact on state expenditures to DHHS and local units of government. Under the provisions of the bills, genetic testing to establish parentage and standard adoption proceedings would not apply to children conceived under a surrogacy agreement as established in the Assisted Reproduction and Surrogacy Parentage Act. Additionally, only child support and paternity can be established through a Title IV-D agency for children conceived under a surrogacy agreement. Any fiscal impact would be dependent on the savings resulting from the decrease of genetic testing and child maintenance payments for adoptive parents of children conceived through surrogacy. Additional fiscal impacts would be dependent on the revenue from increased child support payments from eligible parents of children conceived through surrogacy.

House Bill 5212 would have an indeterminate fiscal impact on local court funding units. Costs could be incurred depending on how provisions of the bill affect court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as enforcement practices, judicial discretion, case types, and complexity of cases.

POSITIONS:

Representatives of the following entities testified in support of the bills:

- COLAGE (10-25-23)
- GLBTQ Legal Advocates and Defenders (GLAD) (10-25-23 and 11-1-23)
- Michigan Fertility Alliance (10-25-23 and 11-1-23)
- Mothering Justice (10-25-23)
- Uniform Law Commission (11-1-23)

The following entities indicated support for the bills:

- Department of Attorney General (11-1-23)
- Academy of Adoption and Assisted Reproduction Attorneys (10-20-23)
- ACLU of Michigan (10-25-23)
- American Society for Reproductive Medicine (10-25-23)
- Center for Reproductive Rights (10-23-23)
- Equality Michigan (10-25-23)
- Family Equality (10-21-23)
- Michigan Poverty Law Program (11-1-23)
- National Center for Lesbian Rights (10-25-23)
- RESOLVE: The National Infertility Association (10-19-23)
- Society for Ethics in Egg Donation and Surrogacy (SEEDS) (10-11-23)
- State Bar of Michigan Family Law Section (11-1-23)
- State Bar of Michigan LGBTQ+ Section (11-1-23)

The Heritage Foundation indicated a neutral position on House Bill 5207. (11-1-23)

The Center for Bioethics and Culture wrote with concern regarding the bills. (11-1-23)

Representatives of the following entities testified in opposition to the bills (11-1-23):

- Michigan Catholic Conference
- Right to Life of Michigan

The following entities indicated opposition to the bills:

- Advocates for Better Care (10-25-23)
- Citizens for Traditional Values (11-1-23)
- Them Before Us (11-1-23)

Heritage Action indicated opposition to House Bills 5207 and 5208. (11-1-23)

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